

# SUMMARY REPORT

## CHICAGO POLICE DEPARTMENT

LOG NO  
1058279TYPE  
CR, UDATE OF REPORT  
03-AUG-2017

INSTRUCTIONS: SUBMIT ORIGINAL AND 3 COPIES IF ASSIGNED TO SAME UNIT AS ACCUSED.  
SUBMIT ORIGINAL AND 4 COPIES IF NOT ASSIGNED TO SAME UNIT AS

TO: ☐ CHIEF ADMINISTRATOR,  
☐ INDEPENDENT POLICE REVIEW AUTHORITY ☐ CHIEF,  
☐ BUREAU OF INTERNAL AFFAIRS

FROM - INVESTIGATOR'S NAME	RANK	STAR NO	EMPLOYEE NO	UNIT ASSIGNED	UNIT DETAILED
CIACCO, JESSICA	9181			113	

REFERENCE NOS.(LIST ALL RELATED C.L., C.B., I.R., INVENTORY NOS., ETC., PERTINENT OF THIS INVESTIGATION)

INCIDENT ADDRESS: [REDACTED] INDIANA AVE, CHICAGO, IL 60637

DATE / TIME: 08-NOV-2012 15:11

BEAT: 322

### ACCUSED

NAME	RANK	STAR NO	EMP NO	UNIT ASSIGNED	UNIT DETAILED	SEX/RACE	DOB	APPOINTED DATE	ON DUTY ?	SWORN ?
TERNAND, BRANDON R	9161	2717	[REDACTED]	005	011	M / WHI	[REDACTED] 1984	04-JUN-2007	YES	YES

### REPORTING PARTY

NAME	ADDRESS*	CITY	TELEPHONE	SEX / RACE	DOB / AGE
WATSON, LARRY	RANK: 9796, STAR NO: 638, EMP NO: [REDACTED]		Bad Phone No: [REDACTED]	M / BLK	[REDACTED] 1958 / 59

### VICTIMS

NAME	ADDRESS*	CITY	TELEPHONE	SEX / RACE	DOB / AGE
[REDACTED]	[REDACTED] EMERALD AVE	CHICAGO, IL	[REDACTED]	M / BLK	[REDACTED] 1997 / 20

### WITNESSES

NAME	ADDRESS*	CITY	TELEPHONE	SEX / RACE	DOB / AGE
RAZO, VICTOR	RANK: 9165, STAR NO: 20234, EMP NO: [REDACTED]		Bad Phone No: 2132	M / S	[REDACTED] 1984 / 33
SLEDGE, EUGENE	RANK: 9161, STAR NO: 7704, EMP NO: [REDACTED]		Bad Phone No: 2132	M / BLK	[REDACTED] 1972 / 45
BRUNO, ANTHONY	RANK: 9161, STAR NO: 12212, EMP NO: [REDACTED]		Bad Phone No: 2132	M / WHI	[REDACTED] 1978 / 38
HERMAN, BRIAN	RANK: 9161, STAR NO: 7401, EMP NO: [REDACTED]			M / WHI	[REDACTED] 1984 / 32
JONES, MICHAEL	RANK: 9161, STAR NO: 12104, EMP NO: [REDACTED]			M / BLK	[REDACTED] 1976 / 41
ZIELINSKI, ROBERT	RANK: 9161, STAR NO: 12307, EMP NO: [REDACTED]			M / WHI	[REDACTED] 1970 / 47
[REDACTED]	[REDACTED]			F / BLK	[REDACTED] /
[REDACTED]	[REDACTED] S. INDIANA AVE	CHICAGO, IL		M / BLK	[REDACTED] 1990 / 26
[REDACTED]	[REDACTED] S. WABASH AVE	CHICAGO, IL		F / BLK	[REDACTED] 1952 / 64
[REDACTED]	[REDACTED] E. MARQUETTE RD APT NO. REAR	CHICAGO, IL		M /	[REDACTED] /
LARA, SALVADOR	RANK: 9161, STAR NO: 17286, EMP NO: [REDACTED]			M / S	[REDACTED] 1982 / 35

\* IF CPD MEMBER, LIST RANK, STAR, EMPLOYEE NOS. IN ADDRESS, PAX/BELL IN TELEPHONE BOX.

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## ALLEGATIONS

\*\* SEE LAST PAGE FOR INSTRUCTIONS FOR STATING ALLEGATIONS, AND COMPLETING THE REMAINDER OF THE SUMMARY REPORT.

## INSTRUCTIONS FOR THE SUMMARY REPORT

AFTER COMPLETING THE FORM, CONTINUE THE SUMMARY REPORT ON 8 1/2 x 11 INCH WHITE PAPER.

### ALLEGATIONS

In narrative form, state how, when, where, and by whom the complaint was received. State the date, time, and location where the incident occurred, and summarize the complaint. If more than one allegation is made, enumerate each allegation as follows:

- No. 1 (Summarize the allegation)
- No. 2 (Summarize the allegation)

### 2. EVIDENCE

Number and attach all statements, reports, and other evidence gathered, on the lower right hand corner. The Complaint Log number must also be entered on the lower right hand corner of each attachment. Following are numbered (EXAMPLES ONLY).

Attachments:

- No. 1 Face Sheet - Yellow
- No. 2 Letter of complaint from victim
- No. 3 Statement of victim
- No. 4 Statement of witness (give name)
- No. 5 Report of member (give name)
- No. 6 Statement of member (give name)
- No. 7 Progress report of investigator (give name)
- No. 8 Copy of certified letter to reporting party
- No. 9 Copy of Alcoholic Influence Report

(accused)

- No. 10 General Offense Case Report,

R.D. \_\_\_\_\_

- No. 11 Signed Sworn Affidavit

### 3. INVESTIGATION

In narrative form, indicate the fact-finding processes followed and the information ascertained as a result of the investigation. Whenever reference is made to an attachment, indicate the attachment number.

### 4. FINDINGS

Each allegation must be classified as either of the following:  
Unfounded - Exonerated - Not Sustained - Sustained - No Affidavit.

If the classification is "Sustained," indicate the rule number violated, the context of the rule, and how the rule was violated by the member.

Example: Allegation No. 1. Unfounded

Allegation No. 1. Sustained - Violation of Rule 12,  
Failure to wear the uniform as prescribed, in that on 27 Feb

84

the accused was found to be wearing a non-prescribed short sleeve shirt.

Even though the original allegation(s) may be Unfounded, etc., the investigation may uncover a violation of serious nature unrelated to the original complaint, in which case disciplinary action should be recommended for the other violation.

Example: Allegation No. 1. Unfounded

Allegation No. 2. Not Sustained Other violation:

Sustained-

with

and

Violation of Rule 26, Failure to provide the Department

a current address and telephone number, in that the accused related in his statement that he had moved

obtained a new telephone number and he had failed to provide this information to the Department.

SUMMARY OF PREVIOUS DISCIPLINARY ACTIONS and RECORD OF PREVIOUS COMPLIMENTARY HISTORY IN SUSTAINED CASES ONLY, copies of the accused member's Summary of Previous Disciplinary Actions and Record of Previous Complimentary History will be included as attachments to the final investigation report, Refer to the General Order entitled "Complaint and Disciplinary Procedures."

### 5. RECOMMENDATION FOR DISCIPLINARY ACTION

One (overall) recommendation for disciplinary action will be made by the investigator. The recommendation will be for all sustained findings; recommendations will not be made for each sustained allegation

- Examples:
- 1. Violation noted, no disciplinary action warranted.
  - 2. That the accused member be reprimanded.
  - 3. That the accused member be suspended for days
  - 4. That the accused member be separated from the Department.

6. DATE INITIATED: (Date complaint was received for investigation)

7. DATE COMPLETED: (Date of this report)

8. ELAPSED TIME: (Total time, expressed in days)

	(Investigator)	
	Rank	Name
Star No.	Unit	

### 9. APPROVALS

The investigator will initiate the Command Channel Review form (CPD-44, 113-A) by completing the Investigator section.

**SUMMARY OF INCIDENT:**

On 08 November 2012, at approximately 1534 hours, Beat #363B, Officer Brandon Ternand, #2717 and Officer Victor Razo, #3424 along with Beat #363C, Officer Eugene Sledge, #7704 and Officer Anthony Bruno, #12212 responded to a burglary in progress call at [REDACTED] Prairie Avenue. Upon arrival, the officers determined that there was not a crime in progress at the location, and they cleared the call.

Officer Razo and Officer Ternand began to leave the area, driving westbound through the alley from Prairie Avenue toward Indiana Avenue. Officer Sledge and Officer Bruno were following them through the alley. As Officer Razo drove through the alley, Officers Ternand and Razo observed [REDACTED] walk into the alley, moving towards them. The officers claim to have seen Mr. [REDACTED] holding a handgun in his right hand. According to the officers, Mr. [REDACTED] looked towards Officer Ternand and Officer Razo and immediately turned in the opposite direction while tucking the handgun to the left side of his body. Mr. [REDACTED] walked quickly away and then ran northbound on Indiana Avenue and out of sight of Officers Ternand and Razo. Officer Razo drove north onto Indiana Avenue in pursuit of Mr. [REDACTED] and used his police radio to notify OEMC that he and Officer Ternand were in pursuit of a black male (Mr. [REDACTED]). Officer Razo also provided OEMC with a description of Mr. [REDACTED]'s appearance and that he ran northbound on Indiana Avenue while holding the left side of his body.

Officer Razo turned eastbound onto [REDACTED] Street and brought the vehicle to a stop. Officer Ternand exited the vehicle and pursued Mr. [REDACTED] on foot as Mr. [REDACTED] ran southbound through a vacant lot. It is reported that, as Officer Ternand pursued Mr. [REDACTED] through a vacant lot, he announced to Officer Bruno, who had exited his vehicle, that Mr. [REDACTED] had a gun.

Officer Ternand continued to pursue Mr. [REDACTED] as he ran southbound through the backyards of several residences on Indiana Avenue, while jumping and climbing over fences. Officer Bruno paralleled Officer Ternand's pursuit by running southbound down the alley that ran parallel to Mr. [REDACTED]'s flight path.

After Mr. [REDACTED] jumped over the fence at 6727 South Indiana Avenue, Officer Ternand fired one shot in Mr. [REDACTED]'s direction, striking Mr. [REDACTED] in the back of his head. At the time Officer Ternand fired his weapon, he was standing in the backyard of [REDACTED] S. Indiana Avenue, approximately 50-55 feet from Mr. [REDACTED].

Officer Ternand would later state that Mr. [REDACTED] had stumbled, reached toward his waist, and turned in his direction. Officer Ternand asserts that, he believed Mr. [REDACTED] was armed, and he feared that Mr. [REDACTED] intended to shoot at him, leading him (Officer Ternand) to fire his weapon at Mr. [REDACTED].

Officer Bruno, who was in the alley when Officer Ternand fired at Mr. [REDACTED], proceeded toward the backyard of [REDACTED] South Indiana Avenue where he found Mr. [REDACTED] lying on the ground. Officer Bruno handcuffed Mr. [REDACTED] and searched Mr. [REDACTED]'s body and the area surrounding Mr. [REDACTED]'s body for a handgun, but found nothing.

During a search of Mr. [REDACTED]'s path of flight, Officer Salvador Lara, #17286 found a .22 caliber, black colored revolver in the front yard of [REDACTED] South Indiana Avenue, which is the front yard of the building where Mr. [REDACTED] initially turned and ran from Officers Razo and Ternand.

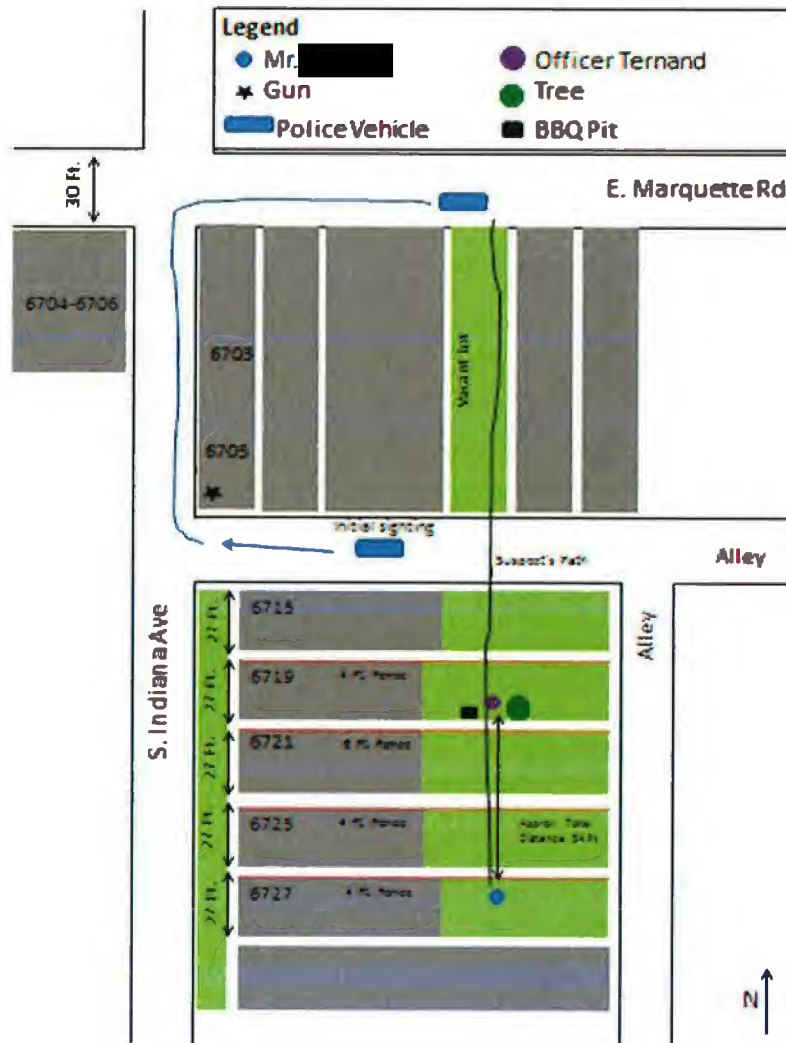


Diagram of incident location (Att. 180)

**ALLEGATIONS:**

It is alleged in a Civil Suit, filed by Ms. [REDACTED], that on 08 November 2012, **Officer Brandon Ternand, #2717<sup>1</sup>**:

1. Used an unreasonable and excessive amount of force when he shot Mr. [REDACTED].
2. Used deadly force against Mr. [REDACTED] which was unprovoked and unwarranted.

**APPLICABLE RULES AND LAW:**

**Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.**

**Rule 6: Disobedience of an order or directive, whether written or oral.**

**Rule 38: Unlawful or unnecessary use or display of a weapon.**

Chicago Police Department's General Order 02-08-03, Section III, A; Deadly Force

Illinois State Statute 720 ILCS 5/7-5; Peace Officer's Use of Force in Making Arrest

**INVESTIGATION:**

The **IPRA Preliminary Report** reflects the information provided by Deputy Chief Eddie Johnson, who was the On Scene Incident Commander who responded to this event. Deputy Chief Johnson related that on 08 November 2012, at approximately 1534 hours, two unmarked tactical vehicles, Beats 363B and 363C, responded to a report of a burglary in the vicinity of [REDACTED] and Prairie. After the officers determined that the burglary was unfounded, they drove west from Prairie through the east-west alley south of [REDACTED]<sup>h</sup> Street. As the officers approached Indiana, the officers observed a black male, now known as [REDACTED], in a red jacket walking north on Indiana Avenue across the opening of the alley. The officers observed Mr. [REDACTED] tucking a "pistol" into his waist with his right hand. Deputy Chief Johnson related that when Mr. [REDACTED] saw the officers, he gave them an "Oh, shit" look and "power-walked" away before running north on Indiana out of the officers' sight. The lead squad vehicle, Beat 363B, drove west in the alley and turned north onto Indiana Avenue in pursuit of Mr. [REDACTED]. The second squad vehicle, Beat 363C remained in the alley near a power pole.

Deputy Chief Johnson related that Beat 363B turned east onto [REDACTED] Street, where the passenger officer, Brandon Ternand, exited the squad vehicle and pursued Mr. [REDACTED] on foot. Mr. [REDACTED] ran east on [REDACTED] Street and then south through a vacant lot on the east side of the building at [REDACTED] E. [REDACTED] Street. The officers assigned to Beat 363C exited their vehicle and heard movement. Mr. [REDACTED] ran south across the alley, over a fence, and into the backyard of a residence. Officer Ternand continued to pursue Mr. [REDACTED] on foot while one of the officers assigned to Beat 363C ran east in the alley to the north-south alley between Indiana and Prairie to parallel the foot chase. Mr. [REDACTED] climbed over fences into other backyards as he continued

<sup>1</sup> Officer Brandon Ternand's star number was changed from #7808 to #2717.



running south. Deputy Chief Johnson related that he was told that when Mr. [REDACTED] climbed over the fence into the backyard of [REDACTED] S. Indiana, he stumbled, reached to his waist, crouched, and turned in Officer Ternand's direction. Officer Ternand was in the back yard of [REDACTED] S. Indiana near a tree and barbeque grill and was shouting, "Police!" and telling Mr. [REDACTED] to show his hands. When Mr. [REDACTED] turned in Officer Ternand's direction and reached to his waist, Officer Ternand fired one shot at Mr. [REDACTED], striking Mr. [REDACTED] in the head. Mr. [REDACTED] fell to the ground in the backyard of [REDACTED] S. Indiana.

Deputy Chief Johnson was told that the officer who had paralleled the foot chase in the north-south alley heard the gunshot while he was behind a garage. That officer jumped over a gate, entered the backyard of [REDACTED] S. Indiana, handcuffed Mr. [REDACTED], called for an ambulance, and searched Mr. [REDACTED] and the immediate area for a gun. That officer did not find a gun. Deputy Chief Johnson was told that responding officers searched the route of the pursuit and located a revolver at the southwest corner of the apartment building at [REDACTED] S. Indiana. The revolver was a .22 caliber "Long" model. (Att. #4)

A **Sketch of the scene** drawn by IPRA Inv. James Lukas, #117 depicts the path of the pursuit, the location where the shooting occurred, the position of Officer Ternand when he discharged his weapon, the position of Mr. [REDACTED]'s body where he fell, and the location where the gun was recovered. (Att. #5)

The **Major Incident Notification Report**<sup>2</sup> documented that the officers were returning from a burglary in progress call when they observed the offender in the south alley of Marquette. The offender looked in the officers' direction and immediately turned and started to walk away. The officers observed a handgun in the offender's hand. The officers pursued the offender through several yards. The officers gave verbal commands to drop the weapon and show his hands while announcing their office. The offender refused to comply and continued to flee. As the offender cleared a fence, the offender reached into his pocket. The officer, fearing for his life, fired one time. The offender was struck once and pronounced dead on the scene. The offender's weapon was recovered containing four live .22 caliber rounds and one expended .22 caliber round. (Att. 104)

The **Case Supplementary Report** detailed the canvass undertaken by Detectives, who canvassed in the 200 block of East Marquette, the [REDACTED] block of South Prairie, and the [REDACTED] block of South Indiana. No new information was uncovered during the canvass. (Att. 85)

**Department Reports**<sup>3</sup> provide information related to the incident, the detectives' canvass, Mr. [REDACTED]'s autopsy, the detectives viewing of the video from the residential building at [REDACTED] East Marquette Road, statements given to the Detectives by Officers Brandon Ternand, Victor Razo, Anthony Bruno, Eugene Sledge, Salvador Lara<sup>4</sup> and witnesses [REDACTED]<sup>5</sup>, [REDACTED]<sup>6</sup>, [REDACTED]<sup>7</sup>, and [REDACTED]<sup>8</sup> (Atts. #8, #57 and #85)

<sup>2</sup> This report lists Officer Brandon Ternand, #2717 as the victim and [REDACTED] as the offender.

<sup>3</sup> Department Reports consist of the Original Case Incident Report, Detective Supplementary Reports.

<sup>4</sup> Officer Lara found the gun in the yard at [REDACTED] South Indiana Avenue.

<sup>5</sup> Ms. [REDACTED] was interviewed twice by IPRA. (See Attachments #18-19 and #98-99)

**The Detective Files and General Progress Reports** contained copies of Department Reports,<sup>9</sup> the Medical Examiner's Postmortem Examination of [REDACTED] Laboratory Reports from the Illinois State Police Forensic Services, Social Media Photographs of [REDACTED] holding various firearms and the detectives notes used to complete the Department Reports. (Att. #129)

Officer Ternand's **Tactical Response Report (TRR)**<sup>10</sup> documents that Mr. [REDACTED] did not follow verbal direction, fled, and placed Officer Ternand in imminent threat of a battery. More specifically, the report states:

R/MEMBER OBSERVED SUBJECT GRAB AT HIS WAISTBAND AND SPIN TO FACE THE MEMBER. R/MEMBER FEARING THE SUBJECT WAS STILL ARMED AND FEARING AN ATTACK CAUSING GREAT BODILY HARM DISCHARGED HIS WEAPON.

Box 30 documents that Mr. [REDACTED] was armed with a Revolver. (Att. #6)

**The Officer Battery Report (OBR)** completed by Officer Ternand documents that Officer Ternand provides the same narrative as that of the TRR. Officer Ternand had no apparent injury. (Atts. #6-7)

**Chicago Police Department Event Query #1231309507**<sup>11</sup> for November 8, 2012, at approximately 1516 hours documents that Beats #363B and 363C responded to a burglary in progress call at [REDACTED] South Prairie Avenue. (Att. #108)

**Chicago Police Department Event Query #1231309796 and #1231310046** for November 8, 2012 documented the following:

- 15:33:59 dispatched notified of foot pursuit.
- 15:34:12 male in red jacket holding side.

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<sup>6</sup> Mr. [REDACTED] was not interviewed by IPRA. He was inside a garage when he heard someone yelling "Police" then he heard a single gunshot. When he came out of the garage he observed the police.

<sup>7</sup> Ms. [REDACTED] was entering her building when she heard and observed a police vehicle driving eastbound on Marquette. She then observed the police vehicle stop and a police officer exit the vehicle and run through a vacant lot.

<sup>8</sup> Mr. [REDACTED] was inside the garage with Mr. [REDACTED] when he heard what sounded like a gunshot in the alley. He did not exit the garage and he heard nothing else.

<sup>9</sup> Department Reports consist of the Original Case Incident Report, Detective Case Supplementary Reports, Inventory Reports, Crime Scene Processing Reports, Investigative File Inventory Report, Property Release Order, firearms Receipt & Worksheet, [REDACTED]'s Juvenile Criminal History Report and the Detectives General Progress Reports.

<sup>10</sup> Box 73 lists the reporting member as Brandon Ternand, signature PC0Z469, dated 08 November 2012 at 21:11:08 hours. Box 74 lists the Reviewing Supervisor as Brian Schnier, signature P [REDACTED] reviewed on 08 November 2012 at 21:11:52 hours. (Att. #6)

<sup>11</sup> This is the call that Beats #363B and #363C had responded to and closed out just prior to when they observed [REDACTED] walk into the alley with a handgun.



- 15:34:24 Shots fired.
- 15:34:47 Shots fired by 363B.
- 15:34:56 [REDACTED] S. Indiana.
- 15:34:57 dispatch radio 323 for assistance.
- 15:35:13 323 321 assist units.
- 15:35:22 slowdown.
- 15:36:02 dispatch notifies Beat 323 to slowdown.
- 15:36:23 offender shot.
- 15:39:09 located in the vicinity of [REDACTED] East Marquette Road / [REDACTED] South Indiana Avenue. (Att. #9)

**Chicago Police Department Event Query #1231309955** for November 8, 2012, at approximately 1542 hours documents a call from Sprint PCS telephone # [REDACTED] in the vicinity of [REDACTED] South State Street. The caller has since been identified as [REDACTED] (Atts. 10 & 178)

The pertinent part of the OEMC transcription is as follows:

911: Chicago emergency [unintelligible]

[REDACTED]: Hi, I was callin' because ... um ... some boy was just runnin' from the police officers ... and... while he was jumpin' the gate, one of the officers just shot him in the back... they shootin' at him...

911: He's been shot?

[REDACTED]: In the [unintelligible] of [REDACTED] block of State and...around the block...right there...on the main street

911: He was shot you think?

[REDACTED]: Yeah

911: You said the guy has been shot?

[REDACTED]: I think so... he was runnin' and he was jumpin' the gates and they, they just stopped and started ... they fired shots.

911: And where is he at now?

[REDACTED]: I just seen him up over the gate, I never seen him get back up.

911: [unintelligible] I just gotta call this lady back ... she said the police hit somebody in the back... but when I transferred her ... the phone dropped.

The **Chicago Fire Department Ambulance Report** documents that Engine #47 responded to [REDACTED] South Indiana Avenue, at approximately 1536 hours regarding an unknown

gunshot victim. The report indicates that the patient sustained a gunshot wound to the face with an exit in the back of the head.<sup>12</sup> The patient was found in a prone position with his wrists handcuffed behind his back. The report documents that the approximate time of death was 1611 hours. (Att. 141)

A **Canvass** of the area of the incident was conducted by IPRA in an attempt to locate additional witnesses and / or evidence. Although there was at least one witness found who heard the shooting, the canvass identified no eye witnesses to the shooting or additional evidence were located.<sup>13</sup> (Atts. #16 & 30)

The **Crime Scene Processing Report** documents a list of inventoried and photographic evidence. The report also documents that a metal detector was used in the backyard of [REDACTED] South Indiana Avenue in an attempt to locate Officer Ternand's fired cartridge case, with negative results. (Atts. #33)

A **Sketch of the scene** drawn by CPD Forensic Investigator Victor Rivera, #11520 depicts the location where the shooting occurred, the position of Mr. [REDACTED]'s body where he was shot and the location where the firearm reported to belong to Mr. [REDACTED] was recovered. (Att. #162)

**Evidence Technician Photographs** document the incident scene, the body of [REDACTED] in the rear yard of [REDACTED] South Indiana Avenue, and a recovered handgun as it lay on the ground in the front yard of [REDACTED] S. Indiana Address (Marker A). (Atts. #37-39)

**Security cameras video footage** from an apartment building located at [REDACTED] East Marquette Road shows a person presumed to be [REDACTED] wearing a red jacket running east past the front gate of the building. What appears to be an unmarked police vehicle can then be seen driving east on Marquette Road. The camera affixed to the rear of the building captured an unmarked police vehicle and an unmarked Chevrolet Tahoe driving west in the alley that is located south of Marquette Road. A person<sup>14</sup> was captured walking east in the alley and at least one person was observed walking from the garage located at the rear of [REDACTED] East Marquette Road. (Att. #29)

**Illinois State Police (ISP) Division of Forensic Service Laboratory Report #C12-047036**, dated December 10, 2012, documents that the firearm belonging to Officer Brandon Ternand was examined, test fired, and found to be in firing condition. (Att. #81)

**Illinois State Police (ISP) Division of Forensic Service Laboratory Report #C12-047036**, dated January 16, 2013, documents the results of Gun Shot Residue samples from both hands of [REDACTED]. The document indicates that [REDACTED] may not have discharged a

<sup>12</sup> This characterization of Mr. [REDACTED]'s injuries is inconsistent with the Medical Examiner's report as will be described further below, which documents no injury to the face and an entrance wound only on the back of the head.

<sup>13</sup> As will be described below, further investigation revealed that [REDACTED] did witness the shooting.

<sup>14</sup> [REDACTED] was working in the garage at this address when the shooting occurred, it is unknown if the person observed on the video is Mr. [REDACTED] or a police officer.

firearm with either hand. If he did discharge a firearm, then the particles were removed by activity, were not deposited, or were not detected by the procedure. (Att. #56)

**Illinois State Police (ISP) Division of Forensic Service Laboratory Reports #C12-047036**, dated April 18, 2013 and May 14, 2013, documents that one J.P. Sauer & Sohn revolver, one Remington discharged cartridge, three Remington live cartridges and one Federal live cartridge recovered at the scene were inventoried under Inventory #12759265 and #12759428. The tests revealed that the revolver was found to be in firing condition. However, relative to all items, the test did not reveal any latent fingerprint impressions suitable for comparison. (Atts. #76-77)

On November 14, 2012, the **Bureau of Alcohol, Tobacco, Firearms and Explosives National Firearm Tracing Center** issued a report documenting that **Trace Number T20120309775** was conducted for the J.P. Sauer & Sohn revolver, which was recovered at the scene. The report indicated that the trace results were negative, due to the age of the firearm. On July 27, 2017, IPRA Deputy Chief Administrator Joshua Hunt contacted the **Bureau of Alcohol, Tobacco, Firearms and Explosives National Firearm Tracing Center** to confirm the results of **Trace Number T20120309775**. Supervisor Helgi P. Nelson explained that neither the serial number associated with the revolver nor the firearm's importer are on file with the ATF. Therefore, no trace could be associated with the original firearm purchaser. (Att. #130)

**Illinois State Police (ISP) Division of Forensic Service Laboratory Report #C12-047036**, dated February 19, 2015, documents that the white colored hooded / zippered sweatshirt and black headband /ear warmer worn by [REDACTED] were tested for gunshot residues. The Laboratory Report documents that no gunshot residues were observed via the visual examination or microscopic examination. The Laboratory Report documents that chemical testing did not reveal any gunpowder or copper residues. The Laboratory Report further documents that chemical testing did reveal the presence of lead; however, there was no discernible pattern suitable for further distance determination testing. (Atts. #89 & 93)

On June 26, 2015, **Joseph Thibault of the ISP Forensic Crime Lab** explained ISP Laboratory Report #C12-047036 to IPRA Supervising Investigator Alexis Serio and IPRA Supervising Investigator Mark Hitt. Mr. Thibault stated that the positive test for lead particulate matter could have resulted from the bullet striking something prior to striking Mr. [REDACTED] and/or the bullet fragmenting upon impacting Mr. [REDACTED]. Mr. Thibault also explained the process under which these tests are conducted. Mr. Thibault stated that the garment to be tested is laid flat, layered by a series of cloths soaked with a chemical agent that react separately to gunpowder / gunshot residue, copper, and lead. The garment is ironed, infused with heat, in order to pick up the presence of each element. Mr. Thibault stated that the cloudlike lead positive test could have resulted from the ironing process. Mr. Thibault added that the absence of gunpowder / gunshot residue and copper does not indicate a close range gunshot. (Att. #101)

**The Postmortem Examination Report from the Cook County Office of the Medical Examiner** for [REDACTED] classified Mr. [REDACTED]'s death as a homicide as a result of a gunshot

wound to the back of the head. The report further indicated that an examination of the skin around the gunshot wound of entrance revealed no evidence of close-range firing.<sup>15</sup> (Att. #55)

**The Toxicologic Analyses from the Cook County Office of the Medical Examiner** for [REDACTED] indicates that Mr. [REDACTED]'s blood test was negative for Benzoyllecgonine, Ethanol and Opiates. (Att. #55)

**Radiological Images from the Cook County Office of the Medical Examiner** depict multiple fragments lodged in the back of [REDACTED]'s head. (Att. #95)

**A Social Media Search documented in the Detective Files** details the discovery of eight photographs from seven posts on facebook.com. Two of the eight photographs are duplicates that were posted twice. Five of the eight photographs depict a young black male believed to be [REDACTED] posing with a handgun. In one of these photographs, the words "R.i.p [REDACTED]/twin" appear above the photo of the young black male believed to be [REDACTED]. Another photograph features at least eight young black males posing together in a group. One male, whose face is partially obscured by a piece of cloth, is posing with a revolver-type handgun. In addition, one photograph depicts a law enforcement patrol vehicle with the words "R.I.P TWIN" typed across the top of the photo and "[REDACTED]" typed across the bottom. (Att. #129)

The **Arrest Report** completed by Officer Ternand documents that Officer Ternand and Officer Razo arrested [REDACTED] on July 28, 2012 for the offense of gambling. (Att. 116)

#### **CIVILIAN WITNESSES:**

[REDACTED] provided three statements to IPRA. The first was taken 9 November 2013, the day after the incident. The second was taken June 30, 2015, approximately two and half years after the incident. The third statement was taken August 16, 2016.

In the first statement, Ms. [REDACTED] recalled seeing Mr. [REDACTED] as he fled from the police, rounding the corner onto Marquette, then running through the yards and hopping over fences. However, she denied hearing or seeing the gunshot. In the second statement, Ms. [REDACTED] admitted having heard the gunshot and having seen Mr. [REDACTED] scaling a fence just before the shot. In these first two statements, Ms. [REDACTED] claimed that she gave her phone to an unknown female who used it to call 911.

During the third statement, Ms. [REDACTED] reiterated her observations about Mr. [REDACTED]'s flight from the officer and what she observed as to the shooting. However, in the third statement Ms. [REDACTED] admitted that it was she who placed the 911 call saying she had seen the police shoot Mr. [REDACTED] in the back.

The following provides summaries of the three statements.

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<sup>15</sup> See page #2, Evidence of Injury, section #1.

In a statement to IPRA on 09 November 2012, witness ██████ stated that on the date and time of the incident, she was in the vicinity of ██████ and Indiana Avenue waiting for a friend. As Ms. ██████ stood near the intersection of ██████ and Marquette Avenue she saw a black male wearing a hat and red clothing<sup>16</sup> running away from two white male police officers, across the street from where she was standing.

Ms. ██████ stated that after the black male ran past her location, an unknown black female asked to use Ms. ██████'s cell phone. Ms. ██████ stated that her attention was focused more on the unknown black female who had Ms. ██████'s cell phone than the black male who was running from the police officers.

Ms. ██████ stated that when she got her cell phone back from the unknown black female, the cell phone was in 911 mode.<sup>17</sup> Ms. ██████ stated that she assumed that the unknown black female must have known the black male that was running from the police officers. After Ms. ██████ got her cell phone back, she received a call from 911 regarding the earlier phone call made from her phone.

In this first statement to IPRA, Ms. ██████ stated that she did not know which direction the police officers and the black male ran, but confirmed that it was further away from where she was standing. Ms. ██████ stated that she did not see the black male with a weapon. Ms. ██████ did not observe the black male holding his clothes or waist area because he was holding the gates, "hopping" the fences; specifically Ms. ██████ stated that "naw he ain't have no weapon" and "he couldn't hold nothing" because he was holding' onto the gates, hoppin' the gates."<sup>18</sup> Ms. ██████ also remarked about how fast Mr. ██████ was running, stating that "yeah, he was movin' fast."<sup>19</sup> When more specifically asked if she had seen Mr. ██████ holding any part of his body, Ms. ██████ responded, "naw cuz he was grabbin' the gates,"<sup>20</sup> referring to the fences that Mr. ██████ went over as he fled.

Ms. ██████ did not see the police officer fire a weapon. Ms. ██████ stated that she saw the police officer fall, as it appeared that he tripped trying to get over the fence. Ms. ██████ stated that she heard a sound, but because there was construction on the road, she thought the sound came from the construction. When Ms. ██████ heard the sound, it never entered her mind that it might have been the noise of a gunshot. Ms. ██████ stated she could not tell what the two officers looked like because the officer was too far from where Ms. ██████ was standing. Ms. ██████ stated that she could not tell if the two officers were wearing plainclothes or a uniform. Ms. ██████ did not see if the two officers had their guns out while they chased the black male. Ms. ██████ stated that she did not hear the two officers or black male say anything because they

<sup>16</sup> Ms. ██████ uttered that the clothing could have been green, she did not know. Att. 19 at page 6.

<sup>17</sup> ██████'s cell phone is 872-232-3466 which is the same phone number that called 911 on November 8, 2012 at approximately 1542 hours under event #1231309955. The unidentified caller stated that a guy was running from the police and was climbing over the fence when the police started shooting at him. He was hit in the back. He went over the fence and never got up. (Att. 10)

<sup>18</sup> Statement of ██████, Att. 19, page 7.

<sup>19</sup> *Id.* at page 6.

<sup>20</sup> *Id.* at page 12.

were too far away. When asked to describe the officer she saw, again Ms. [REDACTED] claimed she was unable to provide a description because "it was too far."<sup>21</sup>

Ms. [REDACTED] stated that she is not from the area and did not know the black male. Ms. [REDACTED] stated that she did not see the black male on the ground because it was too far away. Ms. [REDACTED] did not see an ambulance arrive at the scene because she had left the area. (Atts. #18-19)

**In a second statement to IPRA on 30 June 2015, witness [REDACTED],** was interviewed while in an IPRA vehicle near her residence. Ms. [REDACTED] was asked to clarify some of the information she provided in her earlier statement. Ms. [REDACTED] stated that she has not seen the unknown black female who used her cell phone since the date of the incident. Ms. [REDACTED] confirmed that she had observed a black male jumping over the fences while being chased by the police. Ms. [REDACTED] recalled that the white male police officer was wearing a black bulletproof vest and regular clothing. Ms. [REDACTED] stated that the black male that was running from the police officer was three to four houses/yards ahead of the police officer.

Ms. [REDACTED] stated that she did not see the police officer that was chasing the black male jump any fences. Ms. [REDACTED] stated that she observed the police officer's arm appear to get stuck on the fence when he attempted to climb over it, adding that the officer never made it over the fence. When asked what she meant when she said she saw the officer "tripped," she stated that "he was tryin' to jump the gate but he didn't make the first gate because the gate and his arm, this part got caught on the gate."<sup>22</sup> According to Ms. [REDACTED] when the officer's arm got stuck on the gate, Mr. [REDACTED] was already "two or three houses down because he was jumpin' the gates."<sup>23</sup> According to Ms. [REDACTED], she did not see the officer jump any fences during the chase.

In contradiction to the first statement, in this second statement, Ms. [REDACTED] acknowledged that she heard a single gunshot, but denied seeing who fired the shot.<sup>24</sup> Ms. [REDACTED] said that she heard the shot, and then did not "see the boy come back from the fence that the tried to jump."<sup>25</sup> Ms. [REDACTED] claims that she saw Mr. [REDACTED] on the fence when she heard the gunshot, and that Mr. [REDACTED] went over the fence but failed to get back up. Ms. [REDACTED] described seeing Mr. [REDACTED] as he scaled the fence: "had both his hands comin' up over the fence ... like he was tryin' to bring his lower body over."<sup>26</sup> Ms. [REDACTED] noted that it seemed that Mr. [REDACTED] was familiar with scaling the fences: "I could tell he looked like he did this before."<sup>27</sup> Ms. [REDACTED] stated that she did not see any police officers in the same yard with black male, as she left the area thereafter. (Atts. #98-99)

**In a third statement to IPRA on 22 August 2016, taken at [REDACTED] S. Calumet Avenue,** witness [REDACTED], Ms. [REDACTED] stated she stands by her previous statements regarding the details of the incident but she agreed to answer clarifying follow-up questions regarding the

<sup>21</sup> *Id.* at page 9.

<sup>22</sup> Att. 99 at page 5.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at page 7.

<sup>25</sup> *Id.* page 8.

<sup>26</sup> *Id.* at page 10.

<sup>27</sup> *Id.* at page 11.

police involved shooting that took place on 08 November 2012. Ms. [REDACTED] described how clearly she was able to view the events from her vantage point, remarking that due to the time of year there was no foliage obstructing her line of sight. She also described how she observed Mr. [REDACTED] jumping the fences and gaining distance on Officer Ternand, stating "he was just doin' it good, like he was gone. Basically he was gone. If he didn't get shot he was gonna get away."<sup>28</sup> Ms. [REDACTED] also described Mr. [REDACTED] grabbing the last fence he jumped with both hands and elevating his body over the fence stating "his body was high but you didn't see it come back. After you heard the shot, he didn't come back up."<sup>29</sup>

Ms. [REDACTED] did admit that she had previously lied to IPRA investigators about an unknown female asking to use her cell phone to call 911. Ms. Jackson admitted that it was she herself who made the 911 call. Ms. [REDACTED] stated that she lied about the female borrowing her phone, as she was afraid to become involved as a potential witness in the case. Ms. [REDACTED] stated, I don't wanna get killed dealin' with this from no officer, from nobody dealin' with this. I don't play that kinda stuff. I got a daughter."<sup>30</sup> (Att. 178)

**In a statement to IPRA on 07 June 2013,** [REDACTED], who lives at [REDACTED] S. Indiana Avenue, stated that he was in his kitchen washing dishes when he heard commotion coming from his backyard. He heard his backyard fence rattle, as if someone was jumping or being pushed into the fence. Approximately two seconds later, Mr. [REDACTED] heard one gunshot. One to two seconds after he heard the gunshot, Mr. [REDACTED] walked over to the kitchen window that faces his backyard and saw a young man wearing a red jacket lying face down in the grass of his backyard with a white male uniformed police officer standing over the young man and another white male police officer in uniform standing near the garage approaching the other officer and the victim. Mr. [REDACTED] then walked into the front room of his home to get his cell phone to call his grandmother, who had just left the residence. While in the front room of his house, he observed 10-20 police officers run through the front gate of his property toward his backyard. By the time Mr. [REDACTED] ran back to his kitchen window, he observed that the young man had been handcuffed.

Mr. [REDACTED] did not observe anyone providing medical attention to the young man until approximately two and half hours after he was shot when EMTs attended to Mr. [REDACTED]. Mr. [REDACTED] did not see where the young man was shot, but saw police officers looking at the back of the young man's head as they examined and photographed him. Mr. [REDACTED] observed the police officers searching his backyard and rear porch area. Mr. [REDACTED] overheard some police officers state that they had not found anything during that search. Mr. [REDACTED] watched the police officers over an approximately three-hour period while they conducted their investigation, but no one from the Chicago Police Department knocked on his door or came to his apartment to talk to him about what he saw. (Atts. #66-67)

**In statements to IPRA on 05 June 2013 and 09 July 2013,** [REDACTED] stated she was sitting at the window of a Day Care Center located at [REDACTED] S. Indiana Avenue when she observed a black male wearing a red jacket run through the gangway of a building across the

<sup>28</sup> Att. 178, Page 13.

<sup>29</sup> *Id.*, Page 36.

<sup>30</sup> *Id.*



street from the Day Care Center. A few minutes later, she observed an unmarked police vehicle and a marked police car drive up and stop. Ms. [REDACTED] then observed a "heavily built" black male police officer wearing plainclothes run through the same gangway. The same black male police officer and another police officer later came out of the gangway to the front of the same building and waited until other police officers, including one who wore a white shirt, arrived on scene. The police officers then put yellow tape around the area. Ms. [REDACTED] did not hear any gunshots that day. Ms. [REDACTED] provided an account of what she witnessed to someone from the Chicago Police Department. During her interview on 09 July 2013, Ms. [REDACTED] viewed photographs of two houses located across the street from the Day Care Center, which she identified the residential gangway that she observed the black male wearing a red jacket run through. The photographs Ms. [REDACTED] viewed are attachment #72 in this investigation. (Atts. #60, 71, 72 & 73)

**In a telephone conversation with IPRA on 15 November 2012,** [REDACTED] stated that, at the time of this incident, he was inside his home located at [REDACTED] E. Marquette. Mr. [REDACTED] stated that he did not see the police-involved shooting, but he did hear a gunshot. Mr. [REDACTED] stated that, when he walked outside and into his backyard, he observed a body on the ground in the backyard of a residence several houses away from his. When Mr. [REDACTED] walked over to the yard where the body was located, a dasked Mr. [REDACTED] whether Mr. [REDACTED] knew who owned a vehicle that was parked in the lot next to the yard. Mr. [REDACTED] informed the detective that the vehicle was Mr. [REDACTED]s, and Mr. [REDACTED] moved the vehicle from that location. After doing so, Mr. [REDACTED] went back inside his residence and did not observe anything else. (Att. #47)

**Attempts to locate potential witness,** [REDACTED], were unsuccessful. Ms. [REDACTED]s name and telephone were provided to IPRA by [REDACTED]s mother, [REDACTED]. Ms. [REDACTED] indicated that Ms. [REDACTED] was a witness to the shooting. Ms. Edwards did not provide an address for Ms. [REDACTED]. According to Ms. [REDACTED], Ms. [REDACTED] is a friend of Mr. [REDACTED]. Ms. [REDACTED] did not respond to attempts to contact her by telephone at [REDACTED] on November 9, 2012, November 15, 2015, at approximately 1130 hours and December 13, 2012, at approximately 1145 hours. Attempts to contact Ms. [REDACTED] at her residence, [REDACTED] Michigan Ave, Unit #2, on June 2, 2017, June 5, 2017, June 14, 2017, June 16, 2017, June 21, 2017, and June 28, 2017 were also unsuccessful. (Atts. #15, 48, 50, 157 and 183)

**Attempts to interview a potential witness,** [REDACTED], were unsuccessful. In a telephone conversation with IPRA Inv. Linda Franko, #116 on December 12, 2012, at approximately 1340 hours, Mr. [REDACTED] stated that he was on scene at the incident location after the shooting, but he did not observe the actual shooting. Mr. [REDACTED] scheduled an appointment to come to IPRA on Monday, November 19, 2012 at 1300 hours for an interview. However, Mr. [REDACTED] failed to appear for the interview. Mr. [REDACTED] also did not respond to a letter mailed to him. Mr. [REDACTED] was contacted at telephone # [REDACTED]. (Atts. #48 & 51)

### **On-scene Interview with Detectives**

On November 8, 2012, pursuant to the investigation conducted under RD # [REDACTED], Detective Beningo, Sergeant Kelly, and Lieutenant Wojcik conducted interviews of the involved officers. The following is a summary of each statement to the detectives.<sup>31</sup>

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<sup>31</sup> Att. 57.

Officer Razo told detectives that, when they first encountered Mr. [REDACTED] he saw Mr. [REDACTED] take one or two steps into the alley, look in the officers' direction, then turn around and begin running out of the alley.<sup>32</sup> According to Officer Razo, Mr. [REDACTED] had a black-colored handgun in his right hand.<sup>33</sup> Officer Razo stated that he then observed Mr. [REDACTED] running northbound on the east sidewalk of Indiana and out of view.<sup>34</sup> Officer Razo next observed Mr. [REDACTED] running northbound on the east sidewalk of Indiana while holding his left waist area.<sup>35</sup> (Att. 57)

Officer Bruno stated that he observed Mr. [REDACTED] run from the south alley of Marquette northbound on Indiana. After seeing Officer Ternand and Razo's vehicle accelerate out of the alley, Officer Bruno heard Officer Razo broadcast over the air that they were pursuing an individual who was "holding his left side."<sup>36</sup> Officer Bruno stated that Officer Sledge then stopped their vehicle in the alley anticipating that Mr. [REDACTED] might double back. Then Officer Bruno overheard Officer Razo broadcast that Mr. [REDACTED] was, in fact, running back towards the Officers Bruno and Sledge's vehicle, so he got out of the vehicle and began running east. Officer Bruno then saw Mr. [REDACTED] run out of the vacant lot, still while holding his side, crossing over the alley, over a guard rail and into the rear yard of [REDACTED] South Indiana. According to Officer Bruno, Officer Ternand followed, yelling that Mr. [REDACTED] had a gun. According to Officer Bruno, Officer Ternand pursued Mr. [REDACTED] southbound through the backyard. (Att. 57)

Officer Sledge recounted that, as he and his partner Officer Bruno approached Indiana, he observed a subject wearing a red jacket. He saw the subject run from the alley heading northbound on Indiana. He then saw Officers Razo and Ternand's vehicle accelerate out of the alley and turn northbound on the Indiana. Officer Sledge then heard Officer Razo come over the air that the subject was running northbound on Indiana while holding his side. Officer Sledge related that he then stopped the vehicle anticipating that the subject might double-back. Shortly after, he did hear Officer Razo call over the air that the subject was in fact running back towards he and Officer Bruno. He and Officer Bruno exited the vehicle; Officer Bruno began to run eastbound and Officer Sledge then saw the subject run southbound from the vacant lot and across the alley while holding his side. Officer Sledge stated that Officer Bruno continued to head eastbound in pursuit of the subject. Officer Sledge re-entered his vehicle and drove southbound on Indiana to cut the subject off should he run south and out onto Indiana. Officer Sledge stated that, while he was driving, he heard a single shot. He stopped his vehicle on Indiana and ran into the backyard of a home located on the [REDACTED] block of S. Indiana. From there, he observed Officer Bruno place handcuffs on Mr. [REDACTED].

Officer Ternand recounted that he and his partner, Officer Razo, were driving an unmarked Crown Victoria and had just responded to a burglary in progress call along with Officers Bruno and Sledge in beat 363C, who followed in an unmarked Tahoe. When traveling westbound through the alley south of Marquette, he observed a male subject in a red jacket enter

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<sup>32</sup> *Id.* at page 18.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Att. 57 at page 19.

the alley from Indiana on foot. When the offender “rounded the corner” into the alley traveling eastbound, Officer Ternand saw a black revolver in his right hand that the offender was attempting to place in his waistband. The offender looked up and saw the police and fled north on the east side of the sidewalk of Indiana. Officer Ternand lost sight of the offender, but he and his partner pursued the subject north on Indiana and observed the offender holding his left side. The offender continued north on Indiana and east on Marquette when Officer Ternand lost sight of him again. Officer Ternand and his partner continued to pursue the person north on Indiana and east on Marquette and accelerated to catch up. The offender then fled south through a vacant lot. Officer Razo stopped the vehicle and Officer Ternand got out and pursued the offender on foot. Officer Ternand yelled to the offender “stop, police, drop the gun.”<sup>37</sup>

The offender continued to flee south through the lot and across the alley south of Marquette. The offender went over a guard rail into the backyard of [REDACTED] S. Indiana. Officer Ternand then saw Officer Bruno just to the west running east in the alley, and Officer Ternand told Officer Bruno that the offender had a gun. The offender then fled south into the backyard of [REDACTED] jumped or climbed a fence into [REDACTED] then jumped or climbed over another fence at [REDACTED] where he stumbled to ground. The offender then rose, looked back at him [Officer Ternand], reached into his waist, then turned his body and right arm in Officer Ternand’s direction. According to Officer Ternand, in fear for his life and the life of other officers, and believing the offender was armed, the officer fired one time. (Att. 57)

It should be noted that there is no indication in the interview or the detective’s notes associated with the interview in which Officer Ternand mentioned that he observed Mr. [REDACTED] periodically reaching into or toward his waist as he fled through the yards and over the fences.

#### OFFICERS’ STATEMENTS:

In a statement to IPRA on November 8, 2012 at 2150 hours, Officer Anthony Bruno, #12212, stated that, on the date of the incident, he and his partner, Officer Eugene Sledge initially responded to a burglary in progress call at [REDACTED] S. Prairie Avenue.<sup>38</sup> The burglary in progress ended up being a false call. As he and Officer Sledge were leaving the scene, Officer Sledge drove behind an unmarked Crown Victoria that Officer Razo was driving. Officer Bruno described this driving maneuver as “wolf-packing”.<sup>39</sup> While in the car following Officer Razo’s vehicle, Officer Bruno observed Mr. [REDACTED] who was about 100 feet away and wearing a red jacket, run from the opening of the alley northbound on Indiana Avenue. Officer Bruno saw Officers Ternand and Razo turn northbound out of the alley and “heard them come over the air saying that they had an individual in a red jacket running from them holding his side.”<sup>40</sup> Officer Bruno stated that Officer Sledge stopped the vehicle in the T-alley just in case Mr. [REDACTED] ran back toward Officer Bruno and Officer Sledge. Then Officer Bruno heard one of the officers (either Ternand or Razo) come over the air again stating, “Tony he’s running’ toward you

<sup>37</sup> *Id.* at page 16.

<sup>38</sup> Chicago Police Department Event Query #1231309507 for 08 November 2012, at approximately 1516 hours documents that Beats #363B and 363C responded to a burglary in progress call at [REDACTED] South Prairie Avenue. (Att. #108)

<sup>39</sup> According to Officer Bruno, “wolf-packing” is a term used to describe when one unit rides closely behind another to “have more officers together.” (Att. 25 at page 7)

<sup>40</sup> Att. 25 at pages 8-9.

guys.”<sup>41</sup> Officer Bruno and Officer Sledge then exited the vehicle. Officer Bruno began running east down the alley. Officer Bruno stated that Mr. [REDACTED] ran back towards his general direction, crossing the alley in front of him, at which time he could see that Mr. [REDACTED] was holding his hand at his left side as he ran. Specifically, Officer Bruno stated that Mr. [REDACTED] was “running holding his side still,” namely, his left side,<sup>42</sup> but acknowledged that he did not see any weapon.

Officer Bruno stated that he then observed Officer Ternand, in pursuit of Mr. [REDACTED] run through the vacant lot and yell “stop, police stop!” Officer Bruno stated that he observed Mr. [REDACTED] jump over the first fence into the second yard. Officer Bruno stated that Officer Ternand yelled to him that Mr. [REDACTED] had a gun. Officer Bruno stated that he then ran through the alley east of Officer Ternand and Mr. [REDACTED] in attempt to cut off Mr. [REDACTED]. As Officer Bruno was running, he heard Officer Ternand tell Mr. [REDACTED] to “show me your hands, stop, police, drop the gun, drop the gun.”<sup>43</sup>

Officer Bruno stated that he decided to run in the alley because it was quicker than jumping the fences as he hoped to cut off Mr. [REDACTED]. Officer Bruno stated that while he was running in the alley, he did not see Mr. [REDACTED] jump any additional fences or Officer Ternand jump any fences. Officer Bruno was not in a position to observe Officer Ternand’s flight path, he did hear a fence rattle which he believed was Officer Ternand trying to climb the fence; he associated the noise as coming from an area he believed Officer Ternand to be in.

Officer Bruno stated that, after he heard the gunshot, he looked to his right into the back yard and he saw Mr. [REDACTED] lying face down in the grass. Officer Bruno stated that he holstered his gun in order to climb over the fence to get into the yard. Once in the yard, Officer Bruno stated that he drew his gun again as he approached Mr. [REDACTED]. Officer Bruno initially unholstered his weapon because he was told that Mr. [REDACTED] was armed with a gun and he did not know who had fired the shot. Officer Bruno also unholstered his weapon as he approached Mr. [REDACTED] in the yard because he did not know who had fired the gunshot. Officer Bruno observed Officer Ternand standing “a couple yards [lots] to the north, north of me uh on the far side of the six foot fence.”<sup>44</sup>

Officer Bruno stated that he observed that Mr. [REDACTED]’s eyes were open and there was blood coming from Mr. [REDACTED]’s mouth, but he was completely unresponsive. Officer Bruno stated that he handcuffed Mr. [REDACTED] as Officer Ternand provided cover from the other yard. Officer Bruno stated that Officer Ternand was standing on the other side of a six foot fence a couple yards north of the yard where Officer Bruno was standing with Mr. [REDACTED]. After Officer Bruno handcuffed Mr. [REDACTED], he conducted a quick pat down search. Officer Bruno slightly lifted Mr. [REDACTED] to search Mr. [REDACTED]’s waistband. At that time, no weapon was found. Officer Bruno later learned that a black revolver was found by Officer Lara in the area where the pursuit of Mr. [REDACTED] began. (Atts. #24-25)

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<sup>41</sup> *Id.* at 11.

<sup>42</sup> It should be noted here that, at this point, Officer Bruno made no mention of Mr. [REDACTED] holding his side when he first observed Mr. [REDACTED] at the mouth of the alley. (Att. 25 pages 11-12)

<sup>43</sup> Att. 25 at page 13.

<sup>44</sup> *Id.* at page 17.

In a statement to IPRA on November 8, 2012 at 2232 hours, witness Officer Victor Razo,<sup>45</sup> #16254 stated he and his partner, Officer Brandon Ternand, responded to a burglary in progress call at [REDACTED] S. Prairie Avenue<sup>46</sup> that ended up being three males in a delivery truck and not a bona fide burglary call.

As Officer Razo drove westbound in the alley in their black Crown Victoria, he and Officer Ternand saw Mr. [REDACTED], who was approximately 35 feet away. Mr. [REDACTED] looked in their direction and Officer Razo observed a black object in Mr. [REDACTED]'s hand that Officer Razo believed to be a handgun. Specifically, Officer Razo stated that he "observed directly ahead of me a, a male black wearin' a red jacket uh coming from the south takin' step into the alley goin' eastbound. Takes approximately one step looks in our direction and takes another step goin' back onto Indiana. At which point in time I observed a black object in his right hand, what I believed to be a handgun."<sup>47</sup> Officer Razo stated that he accelerated his vehicle westbound toward Indiana Avenue where Officer Razo saw Mr. [REDACTED] running at "full speed" northbound on Indiana Avenue "holding his left side with both of his hands."<sup>48</sup> Officer Razo called out a description of Mr. [REDACTED] and his direction of flight over the radio. Officer Razo then "got back on the radio give [sic] a description of the offender, his direction of flight, and uh pursued him eastbound on Marquette towards a vacant lot."<sup>49</sup>

At this time, Officer Razo observed Mr. [REDACTED] jump over a handrail. Officer Razo stated that he stopped the vehicle directly in front of the vacant lot and Officer Ternand exited the vehicle and pursued Mr. [REDACTED] on foot while Officer Razo drove east on Marquette, and then south on Prairie Avenue parallel to Mr. [REDACTED]'s flight path. Accord to Officer Razo, Mr. [REDACTED] was still holding his left side as he ran through the vacant lot. Officer Razo stated that "when he began his initial run, I lost sight of him for about one second."<sup>50</sup> Officer Razo did not observe Mr. [REDACTED] throw anything away or do anything with his hands, other than hold his side. According to Officer Razo, this took place in daylight.

Officer Razo stated that as he was driving south on Prairie Avenue he heard "shots fired" called out over the radio. Officer Razo did not hear the gunshots. Officer Razo stated the he exited his vehicle at approximately [REDACTED] S. Prairie Avenue and ran through the gangway calling out Officer Ternand's name because he did not see anyone. Officer Razo stated that he then ran through the next gangway into a rear yard where he observed Officer Bruno. Officer Razo stated that he also observed Mr. [REDACTED] on the ground. Officer Razo stated he then observed Officer Ternand standing in a yard, two lots north of where Mr. [REDACTED] was on the ground. According to Officer Razo, when explaining why he fired at Mr. [REDACTED], Officer Ternand "stated that he believed the offender was goin' to shoot his gun at him and uh he, he shot 'em in fear for his life."<sup>51</sup>

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<sup>46</sup> Chicago Police Department Event Query #1231309507 for 08 November 2012, at approximately 1516 hours documents that Beats #363B and 363C responded to a burglary in progress call at [REDACTED] South Prairie Avenue. (Att. #108)

<sup>47</sup> Att. 27 at pages 8-9.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 10-11.

<sup>51</sup> *Id.* at page 16.

Officer Razo stated that at the time of the incident, he did not know Mr. [REDACTED]'s identity, but after looking at Mr. [REDACTED]'s arrest history, Officer Razo realized that he had arrested Mr. [REDACTED] earlier in the year. Officer Razo believed, "[REDACTED] was part of the DOD Black Disciples on [REDACTED]<sup>th</sup> and Wabash who [were] in a current gang conflict in our uh, in our District and that there was a high probability that he may have a weapon."<sup>52</sup> Officer Razo did not have any other direct experience relative to Mr. [REDACTED] though he recalled intelligence bulletins being disseminated that indicated that persons affiliated with this gang had a high probability of having a weapon. This information was disseminated via bulletins on the CPD Intranet.

Officer Razo stated that he did not search for a firearm that may have been discarded by Mr. [REDACTED], but that he did provide other responding officers with information regarding Mr. [REDACTED]'s flight path. Officer Razo stated that Officer Lara located a handgun at approximately [REDACTED] Indiana Avenue where the initial foot chase began. Officer Razo observed the firearm that was recovered at the scene. Officer Razo stated that he observed the handgun near "the address where the initial foot chase uh began."<sup>53</sup> Officer Razo observed the black revolver with a white handle on the ground, in a grassy area, on the east side of the street of Indiana Avenue. (Att. 27)

**In a second statement to IPRA on 04 March 2016 at 0946 hours, Officer Victor Razo, #16254** stated that on 08 November 2012, the date of the incident, he was a tactical officer. Officer Razo stated that the tactical team has a separate roll call where they discuss any crimes that occurred during previous shifts, including gang activity or shootings. Generally, the team develops a boundary and discusses ongoing conflicts or missions that need to be completed. Relative to active warrants, the information is normally reviewed by individual officers at their own behest. This information is not discussed in individual roll calls. Tactical teams are usually comprised of 10 officers. Officer Razo stated that at the time of the incident, he was not aware that Mr. [REDACTED] had an active warrant for his arrest. Officer Razo stated that, on the date of the incident, he did not have an assignment to locate Mr. [REDACTED]. Officer Razo subsequently added that he realized later after the incident that he and Officer Ternand had arrested Mr. [REDACTED] before, earlier that year in the summer but he did not recognize him at the time the incident occurred.

Officer Razo confirmed that he was working with Officer Ternand and that he was driving the vehicle that the officers were in that night. Officer Razo stated that:

"As we were drivin' westbound in the T alley [REDACTED] was comin' from Indiana and it appeared he wanted to step going eastbound into the alley. So I observed him take a step into the alley. I immediately observed him look in our direction and change his direction of uh travel and go quickly turned north back onto Indiana. When he turned north is when I observed what I believed to be a hand, a handgun in his right hand. And shortly after that he took another quick step and it appeared that he began running. But from that distance from where I was at which was about the half way point of the alley, um I couldn't, I lost sight

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at page 21.

of 'em right away. So I sped my vehicle up to see what he was doing and when I got to Indiana is when I observed he was running full speed.”<sup>54</sup>

When asked to describe more specifically his observations as to the firearm, Officer Razo stated, “Yeah, I just observed the barrel of a, what appeared to be a barrel of a gun”, adding, “So uh from the distance it just appeared to black, dark barrel of a handgun.”<sup>55</sup>

Officer Razo added that at the time he initially saw the gun he said to Officer Ternand “Did you see that?” Officer Razo stated he was referring to Mr. [REDACTED] in the alley with a handgun. Officer Razo stated that Officer Ternand answered “Yes.” Officer Razo stated that he saw the black barrel of a handgun. Officer Razo went over the radio and told OEMC that Mr. [REDACTED] was running holding his left side, implying that he was armed. Officer Razo acknowledged that when he called the information about Mr. [REDACTED] into OEMC, he only reported that he was “holdin’ his side,” not that he had observed him holding a firearm. When asked to explain why he had not stated that he had seen the subject with a firearm, Officer Razo stated:

“At that exact moment I was just sayin’ what I observed. Um a lot of times when I say holdin’ the side it just implies that a weapon’s involved. But uh that’s something I thought about. I just literally was on, on the radio driving and saying what I was observing as I was observing it.”<sup>56</sup>

Officer Razo added:

”When I was traveling out I wanted to verify everything that I was observing. So as I was observing the physical description I just observed from what I saw as I was driving. I, when I was right here and he was coming in, we were still approximately whatever the distance is let’s just say 50 feet. And I just, I just wanted to verify everything that I, that I was observing.”<sup>57</sup>

Officer Razo stated that, although he did not notify OEMC that he observed Mr. [REDACTED] with a gun, he acknowledged that he should have relayed that information to OEMC and responding officers by further stating:

“And like I previously stated, I should’ve did that but when I was on the radio I was just relayin’ what I was observing in the exact moment. And as I was driving in and um speakin’ on the radio I never had a chance to get back on because of everything that, that occurred afterwards. I, I, I never got a chance to get back on the radio.”<sup>58</sup>

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<sup>54</sup> Att. 156 at page 9.

<sup>55</sup> *Id.* at page 15.

<sup>56</sup> *Id.* at page 10.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*



Officer Razo stated that he understands that a person running holding their side and actually seeing a person with a gun in his hand are two different things. Officer Razo acknowledged that relaying the information that Mr. [REDACTED] was observed with a gun was critical.

**In a statement to IPRA on November 8, 2012, at 2105 hours, Officer Eugene Sledge,<sup>59</sup> #7704** stated that he and Officer Bruno, along with Officers Ternand and Razo, responded to a burglary in progress. After the call, Officers Ternand and Razo were driving in an unmarked vehicle in front of Officer Sledge's and Officer Bruno's vehicle, a gold Chevy Tahoe. The Tahoe was not equipped with an in-car camera system. Officer Sledge, who was driving the Tahoe in the south alley of Marquette, stated that he saw a "red blur take off," going northbound on Indiana and that Officer Razo who was driving the unmarked vehicle, turned and pursued Mr. [REDACTED]. Officer Sledge stated that Officer Razo gave out a description of Mr. [REDACTED] and stated that Mr. [REDACTED] was wearing a red jacket and was holding his side. Officer Sledge heard over the radio that Mr. [REDACTED] was coming back in their direction.

Officer Sledge stated that, at one point during the pursuit, he and Officer Bruno exited their vehicle and he saw Mr. [REDACTED] running while holding his left side. Officer Sledge stated that he got back into the vehicle to pursue Mr. [REDACTED] in parallel with his flight path as Officer Bruno pursued Mr. [REDACTED] on foot. Officer Sledge stated that he had stopped his vehicle approximately three houses south from the alley on Indiana Avenue. Officer Sledge was driving with the window down so he could hear the pursuit and at that time he heard a single gunshot. Officer Sledge did not hear any verbal directions nor did he hear Mr. [REDACTED] say anything. Officer Sledge stated that he went over the radio and notified OEMC that there were shots fired. Officer Sledge stated that he then looked for his partner because he did not know if he was hurt. Officer Sledge did not see who fired the shot. Officer Sledge stated that when he walked into the rear yard, he saw Officer Bruno handcuffing Mr. [REDACTED] as he laid in the rear yard. (Atts. # 22-23)

**In a statement to IPRA on February 18, 2016, at 1648 hours, Officer Brian Herman, #7401** stated that, on November 8, 2012, the day that Officer Herman accessed Mr. [REDACTED]'s mugshot, he was working as a tactical officer, assigned to the 362C, a tactical team. Officer Herman stated that he would check the CHRIS system on a daily basis for active juvenile warrants and, if he found any active juvenile warrants, he would use the CLEAR system to access a photograph of any juvenile that had an active warrant. The reason for this daily search is to see the warrants of the high crime areas in the district. In the event that he sees someone walking down the street, he would not recognize that the person had an active warrant unless he obtained a photograph of that person. Officer Herman stated that he would keep the photograph with him while he was working on the street.

Officer Herman stated that he did not recall accessing Mr. [REDACTED] warrant or photograph. Officer Herman stated that he could have possibly shared the information about warrant with his tactical team, but he did not know if he did. Officer Herman stated that he does not prioritize the warrants, and that he usually organizes the warrants by the dates and the district

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<sup>59</sup> Officer Sledge gave a deposition (Att. #114) on 03 December 2013 in relation to Civil Lawsuit #12 L 013429 filed in the Circuit Court of Cook County. His account of the incident he gave in his deposition is consistent with the statement he gave IPRA.

in which he is assigned. Officer Herman did not recall if he had prior contact with Mr. [REDACTED]. Officer Herman further stated that if a person is known for having active warrants in the district, then he would probably share that information with other tactical teams.

Officer Herman said he does not believe that he shared the information relative to Mr. [REDACTED] and his active warrant with Officers Ternand, Razo, Sledge, or Bruno. (Atts. #149-150)

**In a statement to IPRA on February 18, 2016, at 0946 hours, Officer Michael Jones, #12104** stated that on the day of the incident, he was off-duty. Officer Jones stated that on November 6, 2012, the day that Officer Jones accessed Mr. [REDACTED]'s mugshots, he was assigned to locate offenders who had active warrants and investigative alerts by Lieutenant Larry Watson. Officer Jones stated that this has been his assignment for several years. Officer Jones stated that he was working with Officer Frederick Taylor. Officer Jones stated that he accessed Mr. [REDACTED]'s photograph because Mr. [REDACTED] had an active warrant. Officer Jones stated that he would search for active warrants by accessing the Chicago Police Data Warehouse section of the CLEAR system for adults and by accessing the CHRIS system for juveniles. Officer Jones stated that he prioritized warrants according to violent offenders and that he would look for the most violent offenders first. Officer Jones further stated that Mr. [REDACTED]'s warrant would have been a top priority because it was for an Aggravated Battery. (Atts. #146-147)

**In a statement to IPRA on February 18, 2016 at 0930 hours, Officer Robert Zielinski, #12307** stated that on November 8, 2012, the day that Officer Zielinski accessed Mr. [REDACTED]'s mugshot, he was working Beat #306A, assigned to a mission vehicle, and partnered with Officer Weeda. Officer Zielinski stated that his assignment was to look for offenders with active warrants and investigative alerts. Officer Zielinski stated that he was not sure on what day he found out that Mr. [REDACTED] had an active warrant. Officer Zielinski stated that he could have been made aware that a warrant was issued for Mr. [REDACTED] by either accessing the Chicago Police Data Warehouse section of the CLEAR system to see what warrants were issued for the District, or by accessing the CHRIS system to search for juvenile warrants. Officer Zielinski stated that this was what he did on a daily basis, when he reported to work. Officer Zielinski stated that when warrants are issued, they can be issued specifically to district or city wide. Officer Zielinski did not recall if he had prior contact with Mr. [REDACTED]. Officer Zielinski stated that he searched for Mr. [REDACTED]'s photograph because Mr. [REDACTED] had an active warrant. Officer Zielinski stated that he would have shared the information about Mr. [REDACTED]'s warrant with his partner, Officer Weeda. (Atts. #143-144)

**In a statement to IPRA on June 23, 2016 at 1750 hours, Officer Salvador Lara, #17286** stated that, on November 8, 2012 he along with his partner, Officer Herrera, were either in the 3<sup>rd</sup> District Station or leaving the 3<sup>rd</sup> District Station when they heard a transmission over the radio regarding a foot chase in the vicinity of [REDACTED] S. Indiana Avenue. Officer Lara stated that during that same transmission he later heard "shot fired by the police." Officer Lara and his partner drove to the location. Officer Lara stated that, when he first arrived on scene, he made sure the officers were okay. Officer Lara spoke with Officer Razo who stated that he and his team were involved in a foot chase with an individual that ended in a police involved shooting. Officer Lara was told by Officer Razo that the subject had been holding a firearm as he was running from the officers.

Officer Lara could not recall the specifics of what he was told, although he did remember that Officer Razo had informed him of the general flight path over which they had pursued the subject. Officer Lara began to walk the path of flight, in a search for a weapon that the subject might have discarded. Officer Lara stated that, while walking the flight path, he observed a firearm located at [REDACTED] S. Indiana Avenue in a gated backyard. Officer Lara stated that he could not remember if Officer Razo told him that the subject no longer had the firearm or if he learned that information from someone else. Officer Lara further stated that he knew when he traveled the path of flight in search of a firearm that no firearm had been recovered from or near the subject.

Officer Lara stated that there were numerous officers on hand at the scene but he could not specifically recall anyone with him when he located the weapon. Officer Lara notified Sergeant Schnier via the zone 7 radio. Sergeant Schnier relocated to [REDACTED] S. Indiana and directed Officer Lara to guard the weapon. Officer Lara remained there with the weapon until he was relieved. Officer Lara stated that he does not remember who relieved him and he was not there when the gun was collected .

Officer Lara stated that Officer Razo was specific about the details of the incident at the time but because so much time has passed he cannot recall exactly what Officer Razo told him. Officer Lara stated that he did not recall talking to Officers Bruno, Sledge, or Ternand about the incident.

During the interview, Officer Lara was shown photographs taken at the scene [Attachments #39 and #57] where he identified the backyard of [REDACTED] S. Indiana. He further stated that, from viewing the pictures, the firearm was marked by marker A and to the best of his recollection the photo depicted the firearm as he observed that day. (Att. #181)

Pursuant to the investigation, IPRA obtained three separate statements from Officer Ternand.

**In a statement to IPRA on July 24, 2014 at 1142 hours, involved Officer Brandon Ternand,<sup>60</sup> #7808** stated that on November 8, 2012 he was assigned to Beat 363B, a plainclothes tactical unit, and worked with Beat 363C, Officers Bruno and Sledge. Officer Ternand and his partner, Officer Razo along with Officers Bruno and Sledge responded to a possible burglary call that ultimately proved to be false.

After leaving the call, as Officer Razo drove through the alley, Officer Ternand observed Mr. [REDACTED] enter the alley with a gun in his right hand. Officer Ternand stated that Mr. [REDACTED] looked in his and Officer Razo's direction, turned away from the officers, put the gun to the left side of his body, and fled.

Officer Ternand stated that he and Officer Razo pursued Mr. [REDACTED] in the vehicle and when he and Officer Razo got to a vacant lot, Officer Ternand exited the vehicle and pursued

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<sup>60</sup> Officer Ternand gave a deposition (Att. #111) on 09 October 2013 in relation to Civil Lawsuit #12 L 013429 filed in the Circuit Court of Cook County. His account of the incident he gave in his deposition is consistent with the statement he gave IPRA.

Mr. [REDACTED] on foot. Officer Ternand stated that, at this time, he crossed paths with Officer Bruno; Officer Ternand stated that he told Officer Bruno that Mr. [REDACTED] had a gun when they “crossed paths” during the chase.<sup>61</sup> Officer Ternand stated that Officer Bruno paralleled the pursuit of Mr. [REDACTED] by running in the alley while Officer Ternand pursued Mr. [REDACTED] through the back yards.

Officer Ternand stated that, as he pursued Mr. [REDACTED] he yelled out “Stop police! Drop the gun. Drop the gun.”<sup>62</sup> Officer Ternand stated that he had his weapon drawn but had to periodically put it back in his holster, in order to get over the fences because Officer Ternand did not want to jump over the fences with the weapon in his hand. Officer Ternand stated that Mr. [REDACTED] jumped over a fence that was approximately six feet in height, readjusted his waistband, and kept running. Officer Ternand stated that Mr. [REDACTED] then jumped over another fence which - was the last fence he jumped - at which time point he:

“Uh, he gets to - it would be - one of the other fences. That’s the last fence he went over. He actually goes over it, and readjusts but, hesitates. He stands up, hesitates, looks back, and then makes a, you know, movement towards his waistband. He gets kinda towards me, and then, at which point, I fired a shot.”<sup>63</sup>

Officer Ternand stated that he was standing close to the fence when he fired his weapon. According to Officer Ternand, as he looked through the taller fence, he could see Mr. [REDACTED] clearly as he was on the other side of the shorter fence.

Officer Ternand stated that Officer Bruno then came into the yard from the alley where Mr. [REDACTED] was, and handcuffed Mr. [REDACTED] as he provided cover for Officer Bruno from the yard where he was still standing. Officer Ternand estimated he was standing in the second yard about 30-40 feet away from Mr. [REDACTED] when he discharged his weapon. Officer Ternand stated that he and Mr. [REDACTED] were also separated by two fences when he discharged his weapon.<sup>64</sup>

Officer Ternand stated that a gun was later recovered along the flight path. Officer Ternand stated that the firearm looked exactly like the one he saw Mr. [REDACTED] holding in the alley. Officer Ternand stated that he discharged his firearm because he was in fear for his life. He stated that he believed that Mr. [REDACTED] was still in possession of the gun he had seen him with earlier. Officer Ternand also stated that he believed that Mr. [REDACTED] was reaching for the gun. At no point in the foot pursuit did Officer Ternand see Mr. [REDACTED] discard a firearm. Officer Ternand lost sight of Mr. [REDACTED] twice during the pursuit. The gun was recovered near the first spot that Officer Ternand lost sight of Mr. [REDACTED]. (Atts. #79-80)

**In a second statement to IPRA on March 4, 2016, at 1031 hours, Officer Brandon Ternand, #7808** stated that on November 8, 2012 he did not have a specific assignment to locate Mr. [REDACTED] and he was not aware that Mr. [REDACTED] had an active arrest warrant until after the incident. Officer Ternand stated that he did not recognize Mr. [REDACTED] when he first saw Mr.

<sup>61</sup> Att. 80 at pages 6-7.

<sup>62</sup> *Id.* at 16.

<sup>63</sup> *Id.* at page 15.

<sup>64</sup> Details contained in the Crime Scene Processing Report and photographs of the scene indicate that there were three fences separating Officer Ternand and [REDACTED] at the time Mr. [REDACTED] was shot. (Att. 33 and 37).

██████ in the alley with the dark colored gun in his hand. Officer Ternand stated that during the foot pursuit of Mr. ██████ he did not recognize Mr. ██████.

Officer Ternand stated that when he discharged his firearm at Mr. ██████ Mr. ██████ had already cleared the fence that he had jumped and that he had both of his feet planted on the ground. When asked what Mr. ██████ was doing when he fired, Officer Ternand made the following statements:

“he was reaching into his waistband area and turning towards me in a, like an abrupt movement.”<sup>65</sup>

“I saw ‘em tuck [his hand] and he was coming towards me. He was drawing it, and that’s when I fired.”<sup>66</sup>

“and he was like a, it was like a pause when he got over the fence that’s when it was a very like his body was very like nervous. It was like I got the, it felt like as if he was very nervous.” That’s the way I got from the body, his body language.” “Like indecisive.”<sup>67</sup>

Officer Ternand stated that he believed Mr. ██████ was reaching for the handgun that Officer Ternand had seen Mr. ██████ with earlier. Officer Ternand stated that he thought Mr. ██████ was going to try and kill him. Officer Ternand stated that he was in fear for his life and he fired one shot striking Mr. ██████. Officer Ternand stated that he did not retrieve or pick up his shell casing, he did not see anyone else retrieve or pick up his shell casing, and he did not know if anyone else retrieved or picked up his shell casing. (Atts. #153-154)

**In a third statement to IPRA on July 20, 2016, Officer Brandon Ternand, #2717** was served with allegations and agreed to answer clarifying follow-up questions. In this statement, Officer Ternand was not asked to recount the entire incident. Rather the purpose of this interview was to clarify some of Officer Ternand’s prior statements. Officer Ternand stated that he first observed Mr. ██████ walking toward the mouth of the alley with a gun in his hand. Mr. ██████ looked in the officers’ direction, tucked the gun in his waistband, and fled. Officer Ternand stated that Mr. ██████ was running, hunched over, and he could not see his right hand, nor could he see what was in his waistband. Officer Ternand stated that Mr. ██████ “never made any attempt to show that he was unarmed.”<sup>68</sup>

Officer Ternand explained that Mr. ██████ “reached, he reached into his waistband area, couldn’t see his hand and his body turned towards me.”<sup>69</sup> He further stated that “he was, when he was running he was hunched over, not allowin’ me to see his right hand. And you couldn’t see what was tucked into his, I don’t know if it was his waistband or shirt, but you couldn’t see his hand and he would never make an effort to show me.”<sup>70</sup> Officer Ternand explained that Mr.

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<sup>65</sup> Att. 154 at page 10.

<sup>66</sup> *Id.* at page 12.

<sup>67</sup> *Id.* at page 13.

<sup>68</sup> Att. 173 at page 12.

<sup>69</sup> Att. 173 at page 6.

<sup>70</sup> *Id.* at pages 9-10.

■■■■■■s head and torso were turned towards him as he made the abrupt motion towards his waistband.

Officer Ternand stated that Mr. ■■■■■ was in a turning motion but did not take steps toward him. Officer Ternand stated that, at that time, his firearm was drawn as Mr. ■■■■■ had cleared the last fence, but could not recall what position he had it in. Officer Ternand did recall that, at the moment when Mr. ■■■■■ turned towards him, he had his firearm pointed at Mr. Bright.

Officer Ternand stated that when Mr. ■■■■■ was reaching for his waistband and turning to look in his direction, he fired his weapon and that he fired “almost simultaneously” while Mr. ■■■■■ turned.<sup>71</sup> Officer Ternand was asked to explain, if Mr. ■■■■■ was looking at him and turning his body toward him at the time he elected to fire, how it was that his shot struck Mr. ■■■■■ in the back of the head. Officer Ternand stated, “my guess is he turned his head back when simultaneously, split second, probably just turned his head right back.”<sup>72</sup>

As to the allegation that he used an unreasonable and excessive amount of force when he shot Mr. ■■■■■ Officer Ternand stated that he believed Mr. ■■■■■ was drawing a handgun and believed Mr. ■■■■■ was going to kill him.

As to the allegation that he used deadly force against Mr. ■■■■■ which was unprovoked and unwarranted, Officer Ternand stated that he believed Mr. ■■■■■ was drawing the weapon he had previously seen him with, and was going to use the weapon to kill him.

During this interview, Officer Ternand did clarify that when he stated that ■■■■■ “was coming towards me” in his previous statement, he meant to say that ■■■■■ “was turning towards him and that ■■■■■ did not take any steps toward the officer.”<sup>73</sup> (Att. #173)

## DEPOSITIONS:

Pursuant to civil lawsuit #12 L 013429 filed in the Circuit Court of Cook County, depositions were conducted of Officers Ternand, Bruno, Razo, and Sledge. Below is a summary of each deposition.

**In his deposition conducted on December 4, 2013, Officer Razo** stated that he and Officer Ternand had been regular partners for approximately three years. Officer Razo acknowledged that he and Officer Ternand are friends and that they socialize with one another. Officer Razo explained that he and Officer Ternand were assigned to a “district tact team” and were to focus their attention on “gang and narcotic activity within the district and to also respond to any in-progress calls involving any type of violence or anything like that.”<sup>74</sup>

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<sup>71</sup> *Id.* at pages 113-14.

<sup>72</sup> *Id.* at page 16.

<sup>73</sup> *Id.* at page 10.

<sup>74</sup> Att. 12 at pages 17-18.

Officer Razo was driving their police car that day. Officer Razo explained that, “normally we’ll have five cars assigned to our team.”<sup>75</sup> Officer Razo further recalled that he began his shift working with Officers Bruno and Sledge because Officer Ternand had something else to do, but that they patrolled the last half of their shift together. Officer Razo acknowledged that he also considers Officers Bruno and Sledge friends and they also socialize together outside of work. Officer Razo recalled that they were in the vicinity of where the shooting incident occurred in response to a “burglary in progress” call that did not actually turn out to be a crime in progress.<sup>76</sup>

When asked to describe what Officer Razo saw when they first encountered Mr. [REDACTED] in the alley, Officer Razo stated, “I observed in his right hand the barrel of a handgun.”<sup>77</sup> Officer Razo added further, “a black barrel of a handgun, approximately four inches.”<sup>78</sup> Officer Razo claims to have observed this from a distance of approximately 50 to 75 feet.

Officer Razo explained that, after first seeing Mr. [REDACTED] with the gun in his hand, he took off running and the officer momentarily lost sight of him. Officer Razo recalled reporting what he saw over the radio, stating “when I got back on the radio and I began giving a description of [REDACTED] on the air to Dispatch.”<sup>79</sup> Officer Razo gave the description as: “male black wearing a red, red jacket.”<sup>80</sup> When the officer next caught sight of Mr. [REDACTED] he observed Mr. [REDACTED] running northbound on Indiana. According to Officer Razo, when Mr. [REDACTED] fled north on Indiana he was “holding his waistband on his left side” while “it appeared his right hand was towards the front of his body as well.”<sup>81</sup> Officer Razo further explained, “I believe as he was running his right hand moved away from his body in a running motion, but his left hand remained on his waistband.”<sup>82</sup> According to Officer Razo, he could still see Mr. [REDACTED] holding his waist with his left hand after he turned the corner onto Marquette and fled southbound through the vacant lot.

After Officer Ternand got out of the car in pursuit of Mr. [REDACTED], Officer Razo proceeded in pursuit of Mr. [REDACTED] by car down Prairie. Officer Razo traveled south on Prairie and when he reached the middle of the block he heard “shots fired” over the radio.<sup>83</sup> Officer Razo stopped his car and proceeded on foot through the gangway of a residence going east to get to the alley that runs north-south between Indiana and Prairie. When he reached the backyard of a residence he saw Officer Ternand standing in the backyard of the residence immediately to the north of the one in which Officer Ternand was standing, and he saw Mr. [REDACTED] lying on the ground in the backyard of a residence immediately to the south of the backyard in which he was standing. According to Officer Razo, Mr. [REDACTED] was not moving and Officer Bruno had already placed handcuffs on him.

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<sup>75</sup> *Id.* at page 19.

<sup>76</sup> *Id.* at pages 21-22.

<sup>77</sup> *Id.* at page 25.

<sup>78</sup> *Id.* at page 27.

<sup>79</sup> *Id.* at page 30.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at page 9.

<sup>82</sup> *Id.* at page 31.

<sup>83</sup> *Id.*



Before other police officers started arriving, Officer Razo spoke to Officer Ternand “to find out what happened after [he] lost sight of both of them [referring to Officer Ternand and Mr. ██████].”<sup>84</sup> When asked to recount what Officer Ternand told Officer Razo in that moment, Officer Razo replied, “He [Officer Ternand] said that he [Mr. ██████] had hopped three or four fences in a row. Just hopping fences from yard to yard.”<sup>85</sup> Officer Razo also recalled that at the scene incident, shortly after the incident, when he asked Ternand what had happened, Officer Ternand stated that, “he believed ██████ to still have a weapon and he believed that ██████ was going to turn his direction and fire – you know, possibly, you know, fire a weapon. He just basically explained to me, you know he made a movement in his direction that placed him in fear of his life.”<sup>86</sup> When asked if Officer Ternand specifically used the words, “fear for his life,” Officer Razo acknowledged that he had not used that exact phrase.

As other officers arrived and inquired what happened, Officer Razo, “made [himself] available for anybody who wanted to know what was going on.”<sup>87</sup> According to Officer Razo, he was sitting in his vehicle with Officer Fazy for approximately one-hour in the aftermath of the event during which time he told Officer Fazy about what had happened and how he had observed ██████ with the “barrel of the handgun.”<sup>88</sup>

According to Officer Razo, after they left the scene of the incident, he, Officer Sledge, Officer Ternand, and Officer Bruno spent somewhere between two and four hours together at the Area Central office while they awaited being interviewed by detectives and IPRA investigators. According to Officer Razo, the officers “were like taking turns giving interviews with Detective Benigno.”<sup>89</sup> Officer Razo also explained that Officer Ternand was present with him for the two to three hours between when he was interviewed by the detectives and when he was interviewed by IPRA personnel. Officer Razo recalled that they discussed the incident during this time period. After the interviews were completed, Officer Razo and Officer Ternand left the Area Central office together, drove back to the 3<sup>rd</sup> District, after which they both went home.

Officer Razo also explained that he went to two Employee Assistance Program (“EAP”)<sup>90</sup> Counseling sessions during which the shooting incident was discussed. According to Officer Razo, the first session was held approximately three days after the incident and included Officers Razo, Ternand, Bruno and Sledge. The second session was conducted a few weeks later and was attended only by Officer Razo and Ternand.

In addition, according to Officer Razo, prior to the deposition, he and Officer Ternand discussed the incident “a few times” when speaking one-on-one.<sup>91</sup> Officer Razo recounted that, during the summer preceding the 2012 shooting incident, he and Officer Ternand had arrested

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<sup>84</sup> *Id.* at page 44.

<sup>85</sup> *Id.* at page 45.

<sup>86</sup> *Id.* at page 76.

<sup>87</sup> *Id.* at page 48.

<sup>88</sup> *Id.* at page 69.

<sup>89</sup> *Id.* at page 79.

<sup>90</sup> CPD offers a Professional Counseling Service/EAP to all current Department members and their family members and retired Department members. The services provided through this program are covered by a confidentiality policy as outlined in Employee Resource Orders E-06-01 and E06-01-02.

<sup>91</sup> *Id.* at page 85.

Mr. [REDACTED] on two occasions. According to Officer Razo, he did not realize this until he was back at the Area Central office and had seen a photo of Mr. [REDACTED]. Officer Razo recalled that the first incident was related to a robbery, while the second incident involved gambling (Att. 112)

**In his deposition conducted on December 3, 2013, Officer Bruno** acknowledged that he is friendly with Officers Razo, Ternand and Sledge.

Officer Bruno recalled that, after they first saw Mr. [REDACTED] he heard Officer Razo come over the radio saying, "we got one running northbound."<sup>92</sup> Officer Bruno provided more detailed information about where he was and what he was doing as Officer Ternand chased Mr. [REDACTED] through the vacant lot and into the backyards. Officer Bruno observed Mr. [REDACTED] come out of the vacant lot across the officer's path. According to Officer Bruno, Officer Ternand was following approximately 10 to 20 feet behind Mr. [REDACTED]. Officer Bruno ran to Officer Ternand and then both officers followed Mr. [REDACTED] running side-by-side. It was then that Officer Ternand informed Officer Bruno that Mr. [REDACTED] had a gun. When he observed Mr. [REDACTED] climbing a fence into the next yard, Officer Bruno told Officer Ternand that he would try to cut Mr. [REDACTED] off by running over to and down the alley. Officer Bruno believed travelling through the alley would be faster than having to scale the fences across the yards. Officer Bruno then ran to the alley and proceeded southbound.

Officer Bruno recalled sitting in the detective's area at the Area Central office with his fellow officers, but denies that they discussed the incident during this time. Officer Bruno acknowledged having two conversations with Officer Ternand about the incident, but insists that these conversations were about the timing of their respective depositions in the civil matter.

According to Officer Bruno, officers will say "he's holding a side" when they want to convey that "the individual has a gun in his waistband."<sup>93</sup> When asked to explain why officers don't just say "he has a gun" when they believe someone has a gun, Officer Bruno replied, "Well, for one, it's the way we always say it. If the guy has a gun in his waistband we always say, "He's holding a side" rather than "he has a gun." However Officer Bruno clarifies, "If he has a gun in his hand, it's a different story."<sup>94</sup>

When asked more specifically, "So when you hear an officer get on the air saying "He's holding a side," what does that mean to you?" Officer Bruno replied, "That means the individual has a gun. They believe the individual has a gun."<sup>95</sup> (Att. 113)

**In his deposition conducted on October 9, 2013, Officer Ternand** stated that in November 2012 he had been partners with Officer Razo for approximately three years. They worked on a tactical team which focused on gang and narcotic activity, as well as in progress violent crimes such as armed robbery and burglary. He also worked on the tactical team with Officers Bruno and Sledge. Officer Ternand acknowledged that he was friendly and socialized

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<sup>92</sup> Att. 113 at page 28.

<sup>93</sup> *Id.* at page 83.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

with Officers Razo, Bruno, and Sledge. When asked if he knew [REDACTED] before November 8, 2012, Officer Ternand stated that he had previously arrested Mr. [REDACTED], however he did not recall who Mr. [REDACTED] was at the time of the shooting.

Officer Ternand stated that on November 8, 2012 he was in an unmarked police vehicle with Officer Razo. As they were driving down an alley, Officer Ternand saw Mr. [REDACTED] holding a gun in his hand. Officers Ternand and Razo began to pursue Mr. [REDACTED]. As they followed him down an alley, Officer Ternand stated that he saw Mr. [REDACTED] tuck the gun towards his waistband, stating, "He was putting it as he was turning away from us. Put it, I'll say not in his waist, putting it towards his waistband. I don't know where it got tucked."<sup>96</sup>

As the pursuit continued, Officer Ternand saw [REDACTED] holding his left side as he ran. Officer Razo stopped their vehicle on Marquette and Officer Ternand continued the chase on foot. Officer Ternand commented that he withdrew his weapon as soon as he exited the vehicle, and that the weapon he carried did not have a safety on it. Mr. [REDACTED] continued to run at "full speed", pumping his arms as he ran.<sup>97</sup> Officer Ternand did not see anything in either of Mr. [REDACTED]'s hands as Mr. [REDACTED] ran. Officer Ternand shouted, "Police. Stop. Drop the gun. Drop the gun."<sup>98</sup>

Mr. [REDACTED] continued to run through the alley and jumped over a metal guardrail. Officer Ternand testified that, by the time the officer went over the guardrail just after crossing over the alley, Mr. [REDACTED] had already scaled two fences and was two city lots away from the officer. Officer Ternand continued to pursue Mr. [REDACTED] through the city lots and saw Mr. [REDACTED] scale backyard fences with both of his hands, acknowledging that he did not see anything in Mr. [REDACTED]'s hands as Mr. [REDACTED] scaled the fences.<sup>99</sup> Officer Ternand also stated that Mr. [REDACTED] scaled two small fences and then one tall fence. After scaling the third, taller fence, Mr. [REDACTED] fell to the ground. Officer Ternand further stated that as Mr. [REDACTED] got up off the ground, Officer Ternand saw him adjust his waistband, "As if there were an item in there."<sup>100</sup>

After scaling the tall fence, Mr. [REDACTED] continued to run through city lots and scaled two more, smaller fences. Officer Ternand stopped running in the second city lot. It was from this location that Officer Ternand fired his weapon.

When describing the action that prompted Officer Ternand to shoot Mr. [REDACTED] Officer Ternand stated that, after Mr. [REDACTED] scaled a fence, "he kind of stumbles...at that point he looked back at me because I'm still telling him, 'Stop, stop, police.' He looks back... At that point when he looks back I could see his hands briefly."<sup>101</sup> Officer Ternand then stated, "Then he looks away and his hand goes into his waistband area."<sup>102</sup> Officer Ternand then clarifies that he saw Mr. [REDACTED] look over his right shoulder and reach his right hand toward the left waistband

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<sup>96</sup> Att. 111 at page 40.

<sup>97</sup> *Id.* at page 49.

<sup>98</sup> *Id.* at page 50.

<sup>99</sup> *Id.* at page 60-61.

<sup>100</sup> *Id.* at page 64.

<sup>101</sup> *Id.* at page 74.

<sup>102</sup> *Id.* at page 75.

area and states, “He then begins turning towards me and I fire one shot. I believed he was drawing his gun that I saw earlier.”<sup>103</sup>

When questioned by his attorney, Officer Ternand stated that he could see Mr. [REDACTED]’s face when he turned around to look back at the officer as he fled and that Mr. [REDACTED] appeared “irritated.”<sup>104</sup> When asked to explain further, Officer Ternand stated: “It wasn’t like he was a straight line running. It was that hesitation when he was getting up, he looked like he was irritated that I was chasing him or surprised.”<sup>105</sup> Officer Ternand further stated: “I believe he was trying to almost intimidate me into believing he still had the gun.” Officer Ternand added, “I believe that he was irritated and he was doing motions and I believe he was mad that he got rid of the gun.”<sup>106</sup>

### Signatures

Submitted:

[REDACTED]

Inv. Ramona Hendricks, #140

Approved:

[REDACTED]

Deputy Chief Josh Hunt, #7

## ANALYSIS

### I. INTRODUCTION

This investigation requires the reconciliation of two competing principles eloquently outlined in a recent U.S. District Court opinion in a civil matter involving a similar officer-involved shooting incident:

“[A] person has a constitutional right not to be shot unless an officer reasonably believes that he poses a threat to the officer or someone else.” (citing [\*Weinmann v. McClone\*, 787 F.3d 444, 450 \(7th Cir. 2015\)](#) for “distilling this rule” from *Graham v. Connor*, 490 U.S. 386, 388 (1989) and *Tennessee v. Garner*, 471 U.S. 1, 11–12 (1985)). “On the other hand, police officers have a right to protect themselves, even when they do something risky like “pursu[ing] a fleeing felon

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at page 132.

<sup>105</sup> *Id.* at page 133.

<sup>106</sup> *Id.* at page 133 and 134.

into a dark alley.” (citing *Estate of Starks v. Enyart*, 5 F.3d 230, 233-34 (7th Cir. 1993).

*Childs v. City of Chicago*, 2017 U.S. Dist. LEXIS 45156 (N.D. Ill. 2017).

## **II. APPLICABLE LAW AND POLICY**

Consistent with Illinois state law as codified at 720 ILCS 5/7-5, according to the Chicago Police Department’s General Order 02-08-03, Section III, A:

[A] sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person (hereinafter, the “first prong” of the policy), or;
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested (hereinafter, the “second prong” of the policy):
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
  - b. is attempting to escape by use of a deadly weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

The analysis of the reasonableness of an officer’s conduct must be grounded in the perspective of “a reasonable officer on the scene, rather than with the 20/20 vision of hindsight” and “allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014), quoting *Tennessee v. Garner*, 471 U.S. 1 (1985), internal quotation marks omitted. Also, such an analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020. See also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003). Nevertheless, the Supreme Court held in *Garner*, and has since reiterated, that “it is unreasonable for an officer to ‘seize an unarmed, nondangerous suspect by shooting him dead.’” *Brosseau v. Haugen*, 543 U.S. 194, 197 (2004) (per curiam) (quoting *Garner*, 471 U.S. at 11). As Chief Judge Kozinski of the Ninth Circuit once noted: “Nobody likes a game of ‘he said, she said,’ but far worse is the game of ‘we said, he’s dead.’ Sadly, this is too often what we face in police shooting cases like this one.” *Cruz v. City of Anaheim*, 765 F.3d 1076 (9<sup>th</sup> Cir. 2014). In cases such as this, where the officer “is the only witness left alive to testify” we must “look at the evidence with a critical eye.” See *Plakas v. Drinski*, 19 F.3d 1143, 1147 (7<sup>th</sup> Cir. 1994); *Cyrus v. Town of Mukwonago*, 624 F.3d 856, 862 (7<sup>th</sup> Cir. 2010).

## **III. ANALYSIS OF THE EVIDENCE**

As outlined above, consistent with Illinois state law, the Chicago Police Department policy governing the use of deadly force identifies two sets of circumstances under which the use

of deadly force is permissible. The first set of circumstances, as outlined in the first prong articulated above, involves situations in which deadly force is necessary to prevent harm to the officer or another person. The second set of circumstances, as outlined in the second prong articulated above, involves situations in which the officer is confronted with an individual who is attempting to defeat an arrest or escape. To properly evaluate this case, we must analyze the facts in light of both aspects of the policy and law.

**A. Was It Reasonable for Officer Ternand To Believe that Deadly Force Against Mr. [REDACTED] Was Necessary to Prevent Death or Great Bodily Harm to Himself or Another Person?**

We start our analysis by addressing the first prong of the policy which requires us to ask the question, was Officer Ternand's use of deadly force against Mr. [REDACTED] necessary to prevent death or great bodily harm to himself or another person? In making this assessment we must consider the reasonableness of the officer's conduct in light of the totality of the circumstances. *Marion v. City of Corydon, Indiana*, 559 F.3d 700, 705 (7<sup>th</sup> Cir. 2009). Based on the circumstances of this case, this determination requires answers to the following two key questions:

- (1) At the moment when Officer Ternand fired his single shot at Mr. [REDACTED], was the officer's belief that Mr. [REDACTED] was armed objectively reasonable?; and
- (2) If so, did Mr. [REDACTED] make a sudden gesture at Officer Ternand that could reasonably be interpreted as the threatened use of a firearm?

The available evidence to address these questions is analyzed below.

**1. There is insufficient evidence to prove that it was unreasonable for Officer Ternand to believe that Mr. [REDACTED] might be armed when the officer fired.**

***a. Officer Ternand's claim that he saw a firearm in Mr. [REDACTED]'s hands, although possible, is questionable.***

In his statements to detectives on the scene of the incident, his statements given to IPRA, and in his deposition, Officer Ternand claims to have seen Mr. [REDACTED] with a firearm in his right hand when the officers first encountered him in the alley. We need not merely accept Officer Ternand's account of the events at issue. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9<sup>th</sup> Cir. 2014) ("[I]n the deadly force context, we cannot simply accept what may be a self-serving account by the police officer.") (quoting *Scott v. Henrich*, 39 F.3d 912, 915 (9<sup>th</sup> Cir. 1994)). Rather, we must parse through all the evidence to assess the plausibility and reliability of the officer's account. *Id.* (noting that a court reviewing a use of deadly force incident must examine all the evidence in the record "to determine whether the officer's story is internally consistent and consistent with other known facts"). This includes circumstantial evidence that, if believed, would tend to discredit the police officer's story. *Cruz*, 765 F.3d at 1079.

Officer Ternand's insistence that he actually saw Mr. [REDACTED] carrying the firearm is inconsistent with Officer Razo's report to OEMC which failed to mention that Mr. [REDACTED] was

armed. Rather, when Officer Razo called in the description of the fleeing Mr. [REDACTED] the officer merely stated that he was “holdin’ his left side.”<sup>107</sup> Moreover, Officer Ternand has provided inconsistent descriptions of what he saw.

When detectives interviewed him on-scene, Officer Ternand told them that he “saw that [REDACTED] had a dark colored handgun in his right hand that [REDACTED] was attempting to place in his waist area.”<sup>108</sup> In his deposition, which was taken just under a year later, on October 9, 2013, Officer Ternand gave a much more detailed description of the firearm and the manner in which Mr. [REDACTED] wielded it. Officer Ternand claimed to have seen Mr. [REDACTED] with the gun in his right hand, that the gun was dark in color and that, from 50 feet away, he could see the barrel of the gun which appeared to be that of a revolver.<sup>109</sup> Officer Ternand also claimed that, when he first observed Mr. [REDACTED] the gun was in his right hand with his “right arm pointed down along his right waist”<sup>110</sup> and that Mr. [REDACTED] turned away and put it [the firearm] to his left side and began running.<sup>111</sup>

Officer Ternand recalled hearing his partner call over the radio that they were in pursuit of a subject who was “holding his side and running.”<sup>112</sup> Officer Ternand claimed that he saw the gun in Mr. [REDACTED]’s hand before his partner reported over the radio that they were pursuing a subject who was holding his side.<sup>113</sup>

The fact that Officer Ternand claims to have seen Mr. [REDACTED] wield the firearm in this manner and failed to ensure that this information was reported to OEMC to inform his fellow officers lacks credibility. To be sure, according to Officer Bruno, when asked about what it means when an officer says that a fleeing subject is “holding a side,” fellow officers understand the speaker to mean that the fleeing subject has a gun in his waist or that the speaker believes the fleeing subject may have a gun. But when a subject has a firearm in his hands, this would not be an appropriate description. “If he has a gun in his hand, it’s a different story.”<sup>114</sup> Moreover, the assertion that Mr. [REDACTED] was seen walking in broad daylight<sup>115</sup> openly carrying a firearm also lacks credibility.

Officer Razo, who was in the car with Officer Ternand when they first saw Mr. [REDACTED] told the on-scene detectives that he had seen Mr. [REDACTED] with a black colored handgun in his right hand. Officer Razo’s failure to accurately report what he saw to OEMC also undermines the credibility of both officers’ assertions.

The fact that both Ternand and Razo claim to have seen [REDACTED] with a gun and failed to report this begs the question as to whether they actually saw the weapon or merely saw Mr.

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<sup>107</sup> Att. 53

<sup>108</sup> Att. 57 at p. 16

<sup>109</sup> Att. 111 at pages 32-35

<sup>110</sup> *Id.* at p. 34, lines 22-24

<sup>111</sup> *Id.* at p. 39

<sup>112</sup> *Id.* at p. 37

<sup>113</sup> *Id.* at p. 39

<sup>114</sup> Att. 113 at p. 83

<sup>115</sup> In his deposition, Officer Ternand acknowledged that the events took place in “broad daylight.” Att. 111, pg 36. Similarly, Officer Razo also states the events took place in daylight. Att. 27, pg. 11.



██████████ holding his side, as was reported to OEMC, and based on that, surmised that Mr. ██████████ might be armed. There is a very big difference between seeing someone holding his side, and therefore, having reason to suspect that the person might possess a gun and seeing someone out in broad daylight openly carrying gun. Both scenarios are important to report so fellow officers are forewarned. However, it doesn't require law enforcement expertise to understand why reporting the actual display of a gun would be important for fellow officers to know.

The credibility of Officer Razo's claim that he saw Mr. ██████████ with a gun is further undermined by the fact that the officer was less definitive about having seen a gun in other statements related to the issue. In his IPRA interview, Officer Razo was less definitive about seeing the weapon, stating that he "observed a black object in his [Mr. ██████████]'s right hand, what I believed to be a handgun."<sup>116</sup>

Officer Razo's explanation for why he reported seeing a fleeing subject "holding his side" rather than having seen a firearm in the fleeing subject's hand is unconvincing. Officer Razo claims that he "just literally was on, on the radio driving and saying what I was observing as I was observing it."<sup>117</sup> But Officer Razo further stated, "we were still approximately whatever the distance is let's just say 50 feet. And I just, I just wanted to verify everything that I, that I was observing."<sup>118</sup> The fact that Officer Razo wanted to "verify" what he had seen implies that he was not completely certain about what he had seen.

Both Officer Ternand and Officer Razo saw the firearm that was ultimately recovered at the scene.<sup>119</sup> Having knowledge that a firearm was recovered and having had the opportunity to actually see the firearm that was recovered may have influenced the officers' accounts of the events. Certainly, Officer Ternand's having seen the firearm would inform his ability to describe the firearm he claimed to have seen in Mr. ██████████'s hand.

It is also important to point out that, during his deposition, Officer Ternand denied that he saw the gun at the scene of the incident after the shooting had occurred. "Question: You never saw the gun other than at the mouth of the alley? [before Mr. ██████████ took off running] Answer: That's the only time I saw the gun, yes."<sup>120</sup> While in his 2014 IPRA interview, Officer Ternand acknowledged that he had seen the gun after the shooting: "I just, like, saw it laying there from far away. I didn't actually get to inspect it, or anything, yeah. I just saw it there, there's the gun right there, and I – it was like a quick glance at it, and that was it."<sup>121</sup>

It is possible that Officer Ternand denied having seen the gun at the scene of the incident during his deposition in an effort to enhance the credibility of his deposition testimony about having seen the Mr. ██████████ carrying the gun. Officer Ternand's ability to provide more detailed description of the gun, without having ever seen it, would lend credibility to the fact that he did in fact see the gun in Mr. ██████████'s hands.

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<sup>116</sup> Att. 27 at p. 8 lines 25-27

<sup>117</sup> Att. 156 at p. 10

<sup>118</sup> *Id.* at pages 10-11

<sup>119</sup> Att. 27 at p. 21

<sup>120</sup> Att. 111 at pages 96-97

<sup>121</sup> Att. 80 at p. 23

The strongest evidence to suggest that Officer Ternand did, in fact, see Mr. [REDACTED] with a firearm is the fact that Officer Bruno has consistently stated that, when he crossed paths with Officer Ternand as the officer pursued Mr. [REDACTED] on foot across the alley, Officer Ternand shouted to him that Mr. [REDACTED] was armed.<sup>122</sup> However, we must still be mindful that Officer Bruno's account of the events might have been influenced by the facts that: (1) he, too, knew that a gun had been recovered; and (2) he had ample opportunity to discuss the events with Officers Ternand and Razo at the scene as well as in subsequent conversations.

It is possible that Officer Ternand did, in fact, see Mr. [REDACTED] carrying a firearm that day. But, drawing reasonable inferences from all the available facts, it is also plausible that he did not, in fact, see Mr. [REDACTED] carrying the firearm, that he merely saw him holding his side and suspected that he had a firearm.

***b. Even If Officer Ternand did not actually see Mr. [REDACTED] carrying a firearm, Mr. [REDACTED]'s conduct might otherwise have made it appear that he was armed.***

Even if Officer Ternand did not actually see a firearm in Mr. [REDACTED]'s hand, Mr. [REDACTED]'s conduct might otherwise have given Officer Ternand the impression that he was carrying a weapon. Officers Ternand, Razo and Bruno all claim that at various points during his path of flight, the officers saw Mr. [REDACTED] holding his side, more specifically, his left side. However, we have to consider these officers' accounts carefully in light of the circumstances that exist here which undermine the reliability of these statements. First, these officers were not only colleagues who frequently worked together, they were friends that socialized together. In fact, Officers Razo and Ternand had been partners for three years (Att. 112, pg. 16).<sup>123</sup> The second reason to question the reliability of the officers' accounts is the fact that they had ample opportunity to discuss the events among themselves at the scene of the incident as well as on at least three other occasions that are documented in the record here. The first occasion was when the officers were together for several hours at the Area Central office taking turns being interviewed by the detectives. The second and third occasions were the EAP sessions the officers attended, one within a few days of the incident, and another within weeks of the incident. Even if there was no collusion regarding how the officers would ultimately describe the events in question, these multiple discussions could easily have influenced each officer's recollection of what happened.

In particular, Officer Ternand's various accounts of what he observed Mr. [REDACTED] doing with his hands as he fled are inconsistent and, therefore, may not be reliable. In his initial account to detectives, he made no mention of Mr. [REDACTED] reaching to or around his waist as he fled. Given that this later became an important justification for Officer Ternand's belief that Mr. [REDACTED] was armed as he fled, it is surprising that the officer may not have mentioned this in the immediate aftermath of the event. Officer Ternand first described this conduct on the part of Mr. [REDACTED] at his deposition in the civil matter which was taken just under one year after the event took place. Furthermore, Officer Ternand's ultimate description of the manner in which Mr.

<sup>122</sup> Att. 25at p. 13; Att. 113 at pages 34-35

<sup>123</sup> Att. 112 at p. 16-20

█████ turned and fled is inconsistent with that of his partner, Officer Razo. In his statement to IPRA, taken just hours after the shooting, Officer Razo claimed that he saw Mr. █████ turn and run with a gun in his right hand. Officer Razo never described seeing Mr. █████ turn to put his gun on the left side of his body prior to running north on Indiana, as Officer Ternand had stated.<sup>124</sup> In his subsequent interview with IPRA taken on March 4, 2016, Officer Razo again stated that Mr. █████ turned and immediately began running upon seeing the officers, making no mention of Mr. █████ tucking the gun into his waistband.<sup>125</sup>

According to the Detective's Case Supplementary Report (CSR), when initially interviewed, Officer Ternand stated that, when he and his partner initially encountered him, █████ had a dark colored handgun in his right hand that █████ was attempting to place in his waist area."<sup>126</sup> According to Ternand's account given at that time, "█████ then immediately turned around and ran out of the alley, running northbound on the east sidewalk of Indiana and out of view."<sup>127</sup> Ternand and his partner followed Mr. █████ out of the alley, making the turn onto Indiana. It was then that Ternand claims he saw Mr. █████ holding his left waist area, after which Officer Razo called into OEMC to report Mr. █████'s description and direction of flight.<sup>128</sup> Neither the CSR's summary of Officer Ternand's initial account nor the detectives' notes associated with that report make any further mention of Mr. █████ reaching into or at his waist area as he was being pursued through the yards and over the fences.<sup>129</sup> It is not until Officer Ternand described the gesture Mr. █████ made which prompted Officer Ternand to discharge his weapon that Officer Ternand reported that Mr. █████ again reached toward his waist area.<sup>130</sup>

In his deposition, Officer Ternand described Mr. █████'s flight path as he ran east on Marquette, then turned and ran through the empty lot.<sup>131</sup> When asked to describe Mr. █████'s pace, Officer Ternand stated that he was running at "full speed," that the officer saw his arms pumping, and that there was nothing in Mr. █████'s hands.<sup>132</sup> This is consistent with the limited available video evidence as well as the account provided by witness █████ who saw Mr. █████ as he turned the corner onto Marquette from Indiana. When Ms. █████ saw Mr. █████ round the corner, she described him as, "like he was runnin' ... for his life."<sup>133</sup>

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<sup>124</sup> Att. 27 at p. 8-9

<sup>125</sup> Att. 156 at p. 9

<sup>126</sup> Att. 57 at p. 16

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at pages 16-17

<sup>130</sup> Att. 57 at p. 17

<sup>131</sup> Att. 111 at pages 44-48

<sup>132</sup> *Id.* at pages 49-50

<sup>133</sup> Att. 178 at p. 16. While IPRA does find Ms. █████ to be a credible witness, a careful examination of the totality of her statements is necessary to support IPRA's credibility assessment. █████ gave three separate statements to IPRA and also made a call to 911 contemporaneous to the shooting. Although the description of what she saw never fundamentally changed, Ms. █████ clearly attempted to minimize her knowledge of and involvement in the incident. Ms. █████ also directly lied in her IPRA interviews on November 9, 2012 and June 30, 2015 to claim that the 911 caller was an unknown female who simply asked to borrow her phone. (Att. 99 and 19). During her third and final interview with IPRA on August 22, 2016, Ms. █████ finally admitted that she was in fact the individual who called 911 to report the shooting and she went on to explain that she feared potential police retaliation which caused her to lie initially. (Att. 178). While it is far from ideal that Ms. █████ was unable to be completely truthful with IPRA investigators about her role in this incident, her perceived fear is understandable

Officer Ternand then described what he observed as Mr. [REDACTED] continued to flee through the yards and over fences.<sup>134</sup> Officer Ternand described seeing Mr. [REDACTED] scale fences and that, after each fence, Mr. [REDACTED] “adjusts his waistband and gets up.”<sup>135</sup> Officer Ternand acknowledged that, during this time, Mr. [REDACTED] was “maybe almost facing away from [him].”<sup>136</sup> Yet, the officer claimed that he saw Mr. [REDACTED] “putting his hand into his waistband region and moving his hand around in that area ... as if there was an item there.”<sup>137</sup> But when asked to clarify what he saw, Officer Ternand stated, “I mean it was like very quickly he just adjusts, gets up and goes” and “He adjusts as he’s getting up or when he’s standing.”<sup>138</sup> Officer Ternand further stated: “He’s adjusting his left side.”<sup>139</sup> When asked to explain why he did not fire at Mr. [REDACTED] when he saw him reaching to his left side as he fled, Officer Ternand stated, “At that precise second I didn’t believe that he was attempting to draw his weapon at that time” adding “I believe he was adjusting the gun so he could still have it with him.”<sup>140</sup>

When prompted by his attorney, during his deposition, Officer Ternand explained that, Mr. [REDACTED] appeared to be running in a similar manner to other armed suspects he has seen in his experience: “Almost every guy seems to run that way when there’s a heavy gun in their waistband. It moves around so they have to hold it, otherwise it bounces around or it will fall out.”<sup>141</sup>

However, according to Ms. [REDACTED]: “It wasn’t nothin’ on his waist or nothin’ or he reachin’ for nothin’. Cause he was runnin’ so fast.”<sup>142</sup> Based on the clothing recovered from the medical examiner’s office, underneath his jeans, Mr. [REDACTED] wore a pair of gym shorts over a pair of boxers.<sup>143</sup> Photographs from the scene also show that, at the time he was felled by the bullet, the belt-line of his jeans was well below his waist leaving a significant portion of the top of the gym shorts visible.<sup>144</sup>

An alternate explanation for Mr. [REDACTED]’s “adjusting his waist” after clearing each fence is that he was merely adjusting his clothing to facilitate his running. Ms. [REDACTED] described the pants Mr. [REDACTED] was wearing: “his pants was like you know how these boys wear they pants,” and she noted, “I think you could see his boxers.”<sup>145</sup>

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given the events that she had witnessed. Furthermore, Ms. [REDACTED] has no relationship to Mr. [REDACTED] or his family and no apparent reason to mischaracterize what she saw. Accordingly, there is sufficient explanation to rehabilitate her credibility.

<sup>134</sup> Att. 111 at pages 50-74

<sup>135</sup> *Id.* at 63

<sup>136</sup> *Id.* at 64

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 65

<sup>140</sup> *Id.*

<sup>141</sup> Att. 111 at pages 130-131

<sup>142</sup> Att. 178 at p. 17

<sup>143</sup> Att. 55 at p. 1

<sup>144</sup> Att. 37 at p. 19 and p. 22

<sup>145</sup> Att. 178 at p. 17

Ms. [REDACTED] also described seeing Mr. [REDACTED] using his hands to scale at least one fence as he fled.<sup>146</sup> Officer Ternand did not dispute this fact, stating “he possibly put his hands down and jumped over it.”<sup>147</sup> Photos from the scene and the autopsy show that Mr. [REDACTED] had puncture wounds on the palms of his hands that would be consistent with wounds inflicted by the sharp barbs at the top of the chain-link fences he scaled.<sup>148</sup> Officer Ternand has admitted that he never saw a gun in Mr. [REDACTED]’s hand as he fled through the backyards over the fences.<sup>149</sup>

Based on the available evidence, if one credits Officer Ternand’s account that he saw Mr. [REDACTED] carrying the gun when they first came upon him in the alley, under these circumstances, it would be reasonable to presume that Mr. [REDACTED] continued to possess the gun as he fled because it is plausible that Mr. [REDACTED] tossed the gun into the yard just when the officers had lost sight of him.

However, it is also plausible that Officer Ternand did not see the gun in Mr. [REDACTED]’s hand as he claims, that he merely saw Mr. [REDACTED] holding his side as he took flight from the officers causing them to suspect that Mr. [REDACTED] had a firearm. Then having tossed the gun, Mr. [REDACTED] continued to flee without it. Yet Mr. [REDACTED]’s repeated adjustments of his pants after scaling fences could have appeared to be adjustments necessary to keep the firearm from coming loose. Thus, even if Officer Ternand did not actually see the firearm, under these circumstances his suspicion that Mr. [REDACTED] might be armed, might have been reasonable.

Although both officers deny this, we must also acknowledge that it is also possible that Officers Ternand and Razo recognized Mr. [REDACTED] and presumed he was armed from their knowledge of him as gang member and that Officer Razo called in to report a fleeing subject “holding his side” to convey to fellow officers the possibility that Mr. [REDACTED] might be armed.

When weighing all the evidence, although it is possible the Officer Ternand saw Mr. [REDACTED] holding the gun as he says, it is also possible that he did not actually see the gun, but observed Mr. [REDACTED] reaching at or near his waistband giving the appearance that Mr. [REDACTED] was armed. Therefore, there is insufficient evidence supporting that it was unreasonable for Officer Ternand to believe that Mr. [REDACTED] was armed.

**2. The evidence does not support Officer Ternand’s claim that Mr. [REDACTED] made a gesture that could reasonably be construed as a potential threat to use a firearm.**

The law makes clear that an officer is not “required to wait until he sets eyes upon [a] weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun.” *Thompson v. Hubbard*, 257 F.3d 896, 899 (8<sup>th</sup> Cir. 2001). However, the fact that a fleeing suspect is armed, in and of itself, is insufficient to justify the use of deadly force. *See, e.g., Curnow v. Ridgecrest*, 952 F.2d 321, 325 (9<sup>th</sup> Cir. 1991) (denying qualified immunity to officers who shot an armed subject who did not point the gun at them and

<sup>146</sup> *Id.* at p. 13

<sup>147</sup> Att. 11 at p. 69

<sup>148</sup> Att. 129 at p. 32

<sup>149</sup> Att. 111 at pages 50-51

were not facing them). Therefore, assuming arguendo, that Officer Ternand's belief that Mr. [REDACTED] was armed as he fled through the yards and over fences was objectively reasonable, that alone was insufficient to justify the use of deadly force. *See, e.g., Cruz v. City of Anaheim*, 765 F.3d 1076, 1078 (9<sup>th</sup> Cir. 2014) ("if the [armed] suspect doesn't reach for his waistband or make some similar threatening gesture, it would clearly be unreasonable for the officers to shoot him").

Here, the only evidence that suggests Mr. [REDACTED] made a threatening gesture at Officer Ternand is Officer Ternand's own statements and deposition testimony. We need not merely accept Officer Ternand's account of the events at issue. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9<sup>th</sup> Cir. 2014) ("[I]n the deadly force context, we cannot simply accept what may be a self-serving account by the police officer.") (quoting *Scott v. Henrich*, 39 F.3d 912, 915 (9<sup>th</sup> Cir. 1994)). Rather, we must parse through all the evidence to assess the plausibility and reliability of the officer's account. *Id.* (noting that a court reviewing a use of deadly force incident must examine all the evidence in the record "to determine whether the officer's story is internally consistent and consistent with other known facts"). This includes circumstantial evidence that, if believed, would tend to discredit the police officer's story. *Cruz*, 765 F.3d at 1079.

To assess whether the officer's story is internally consistent we must review and compare the information Officer Ternand provided to explain his justification for firing at Mr. [REDACTED] in that moment. As outlined above, Officer Ternand discussed this on five separate occasions between the November 8, 2012 incident and his last statement which was provided on July 20, 2016. Given that these statements span a period of almost 4 years, minor inconsistencies would be expected. To be sure, merely pointing out minor discrepancies would be an insufficient basis upon which to challenge the reliability of an officer's account. *See, Tom v. Volda*, 963 F.2d 952, 961 (7<sup>th</sup> Cir. 1992).

Nonetheless, the reliability of Officer Ternand's account of the events is questionable in light of the inconsistencies in his statements and the fact that his account is also inconsistent with other relevant, albeit circumstantial, evidence.

***a. It is unlikely that Mr. [REDACTED] made the threatening gesture Officer Ternand describes because: (1) Mr. [REDACTED] was gaining distance on the officer as he fled; (2) Mr. [REDACTED] was not, in fact, armed; and (3) Mr. [REDACTED] was shot in the back of the head.***

Based on a review of the facts, it is reasonable to conclude that Officer Ternand's account of what led him to fire at Mr. [REDACTED] is controverted by other evidence in several respects. First, it is unlikely that Mr. [REDACTED] would have stopped to confront the officer in the manner described when Mr. [REDACTED] was successfully gaining ground on the officer. Second, Mr. [REDACTED] was NOT armed and there was no reason for him to be reaching to his left side as the officer has described. Third, Officer Ternand's description is inconsistent with the fact that the single shot he fired hit Mr. [REDACTED] almost squarely in the back of the head.

Officer Ternand claims that, after he scaled the last fence, Mr. [REDACTED] reached toward his waist area and started turning towards the officer. This lacks credibility in light of the fact that Mr. [REDACTED] was already two city lots away from the officer. According to Ms. [REDACTED] Officer

Ternand had gotten caught on a fence during the pursuit, which likely enabled Mr. [REDACTED] to increase the distance between himself and the officer. In fact, Officer Bruno recalls hearing the fence rattle which sound he believed was caused by Officer Ternand trying to get over the fence. In Ms. [REDACTED]'s view, Mr. [REDACTED] would have made good his escape had he not been shot. Of note, Officer Ternand has never mentioned the fact that he got caught on a fence during the foot chase.

Even if Officer Ternand's belief that Mr. [REDACTED] was armed is considered reasonable, the fact that Mr. [REDACTED] was actually not armed at the time he was shot is relevant and provides the basis upon which to draw reasonable inferences regarding Mr. [REDACTED]'s behavior.<sup>150</sup> Given that Mr. [REDACTED], in fact, had no firearm in his pants, it is unlikely that he would have made a gesture indicating that he did, particularly in light of the fact that he was approximately 50 feet away from the officer and was likely gaining ground on him given that the officer had become stuck on the fence.

Even if Officer Ternand reasonably believed Mr. [REDACTED] was armed, where there was no threatened use of the weapon, there was no justification for the use of deadly force. *See Haugen v. Brosseau*, 339 F.3d 857, 870 (9<sup>th</sup> Cir. 2003) ("just as *Garner* instructs that, to comply with the Fourth Amendment, an officer must sometimes forgo or discontinue deadly force and allow a suspect to escape, state tort laws and police practice experts instruct that an officer must sometimes forgo a chase and allow a suspect to escape").

There is another important piece of verifiable evidence that undermines the plausibility of Officer Ternand's account of the events – the fact that Mr. [REDACTED] was shot in the back of the head. According to the medical examiner's report, Mr. [REDACTED] was shot in the back of the head, "5.5 inches beneath the top of the head, in the midline." Further, the wound "coursed from back to front."<sup>151</sup> The physical evidence showing that Mr. [REDACTED] was shot in the back of the head also includes the hoodie he was wearing. This evidence suggests that Mr. [REDACTED] was facing away from the officer when he was shot.

To be sure, in reaction to seeing the shooting, Ms. [REDACTED] called 911 and reported that she had seen an officer shoot someone in the back: "some boy was just runnin' from the police officers ... and... while he was jumpin' the gate, one of the officers just shot him in the back."<sup>152</sup> The fact that this statement was made contemporaneously with the actual event weighs in favor of its reliability, as does the fact that it is corroborated by the physical evidence. In fact, courts routinely rely upon the veracity of these statements and consider 911 calls to be admissible under

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<sup>150</sup> "Ordinarily, facts unknown to an officer prior to the shooting are prevented from being used to attack his credibility. Where the facts are controverted in a reasonable force case, impeachment by contradiction is allowed". *Common v. City of Chicago*, 661 F.3d 940, 946 (7th Cir. 2011). In the present case, Officer Ternand's version of the events is controverted by physical evidence and eye witness testimony. Therefore, the fact that Mr. [REDACTED] was not armed, although unknown to Officer Ternand at the time of the shooting, becomes relevant to assess the credibility of his statement.

<sup>151</sup> Att. 55 at p. 2

<sup>152</sup> Att. 53

the excited utterance exception to the hearsay rule because those statements are “relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” *Castro v. Police Board of City of Chicago* 2016 IL App (1<sup>st</sup>) 14205057 (June 21, 2016).

When asked to explain how Mr. [REDACTED] could have been shot in the back of the head, Officer Ternand stated: “um my guess is he turned his head back when simultaneously, split second, prob’ly just turned his head right back.” But, this is inconsistent with the officer’s own words to describe the sequence of events. Officer Ternand has consistently claimed that he fired as Mr. [REDACTED] *began* to turn toward to him. In his deposition, Officer Ternand stated that Mr. [REDACTED] “then *begins* turning towards me and I fire one shot.” In the 20 July 2016 IPRA statement, Officer Ternand stated: “The point he turned towards me ... I fired, it’s almost simultaneously.” A recent United States District Court case, *Childs v. City of Chicago*, involved eerily similar circumstances, namely, the shooting of a fleeing suspect whom officers believed was carrying a firearm because he was clinching his waistband but was ultimately found to be unarmed. In that case, the United States District Court found that the fact that the subject of the foot chase was shot in the back in the head suggested that he posed less of a threat to the officer. 2017 U.S. Dist. LEXIS 45156 (N.D. Ill. 2017).

***b. The inconsistencies among and within Officer Ternand’s statements about what he observed undermine the reliability of the officer’s version of the events.***

The inconsistencies between and within Officer Ternand’s varying accounts of the circumstances that led him to fire provide a basis to question the reliability of his version of the events. *See Ortega v. San Diego Police Dept.*, 2014 WL 6388488 (SD Cal. 2014) (acknowledging that it is proper for a fact-finder to “take notice of inconsistencies” in an officer’s statement when evaluating the circumstances of a use of force incident).

Officer Ternand described seeing Mr. [REDACTED] reach at, into, or fumble around at his waist, yet the officer acknowledges that Mr. [REDACTED] was facing away from him as he fled, which would make it difficult for the officer to see what his hands were doing in front of his body.

Officer Ternand’s deposition testimony, that he could see Mr. [REDACTED]’s face and that he looked “irritated,” is also at odds with his own account that Mr. [REDACTED] was facing away from the officer, and that he fired as Mr. [REDACTED] “began” to turn toward the officer. Moreover, in his deposition testimony, he described Mr. [REDACTED] as appearing to be irritated, while in his 4 March 2016 IPRA statement he described Mr. [REDACTED]’s appearance as “nervous.”

In addition to inconsistencies among the statements, there are also inconsistencies within the statements given by Officer Ternand. For example, in the March 4, 2016 statement, Officer Ternand described Mr. [REDACTED]’s movement as “abrupt,” but later, says his body language was “like indecisive.” According to Officer Razo, while on scene, Officer Ternand told him that “he believed [REDACTED] to still have a weapon and he believed that [REDACTED] *was going to turn his direction and fire – you know, possibly, you know, fire a weapon.* He just basically explained to me, you know he made a movement in his direction that placed him in fear of his



life.”<sup>153</sup> The fact that Officer Ternand believed that Mr. [REDACTED] was “going to turn” in the officer’s direction is an entirely different thought than Officer Ternand actually observing Mr. [REDACTED] make a threatening movement in the officer’s direction.

**B. Officer Ternand’s Use of Deadly Force Was Not Permissible Based On The Circumstances Under Which Mr. [REDACTED] Was Fleeing From The Officer.**

As explicitly stated in the second prong of the Chicago Police Department policy governing the use of deadly force, under certain circumstances, a law enforcement officer is permitted to use deadly force against a person who is attempting to defeat an arrest or escape if the officer reasonably believes that the person:

- a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
- b. is attempting to escape by use of a deadly weapon or;
- c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

Under the circumstances here, subsection (a) of the policy does not apply. There is no evidence to suggest that Mr. [REDACTED] had committed a forcible felony. The original call to which Officer Ternand and his partner had responded before they encountered Mr. [REDACTED] was a report of a burglary in progress that did not pan out to be an actual burglary in progress.<sup>154</sup> Officer Ternand had no other information from which to suspect Mr. [REDACTED] had committed or attempted to commit a forcible felony.

Neither does subsection (b) of the policy apply. There is no evidence to suggest that Mr. [REDACTED] was attempting to escape by use of a deadly weapon. To the contrary, the evidence clearly establishes that Mr. [REDACTED] was unarmed when he was shot.

Thus, the only potential element of the fleeing felon prong of the use of force policy is subsection (c), which allows the use of deadly force against a person that the officer reasonably believes will endanger human life or inflict great bodily harm unless arrested without delay. The only fact that indicates that Mr. [REDACTED] might endanger human life or inflict great bodily harm unless arrested without delay is that the officer reasonably believed that he was or might be armed with a firearm. This, in and of itself, is insufficient to establish that Mr. [REDACTED] represented an imminent threat to anyone if not arrested right then and there. Therefore, this subsection of the policy does not apply.

**CONCLUSION**

The events that occurred on November 8, 2012 which resulted in the death of [REDACTED] are undoubtedly tragic. However, the analysis of these events and the application of the


<sup>153</sup> Att. 112 at pages 76-77

<sup>154</sup> Att. 80 at p. 7

relevant laws and orders must remain unaffected by tragic outcomes. After careful examination of the evidence and thorough analysis of the applicable law, IRPA has determined by a preponderance of the evidence that Officer Ternand's use of deadly force against [REDACTED] was objectively unreasonable, as outlined by the Use of Force Model, the Illinois State Statute, and the Chicago Police Department's General Orders. IPRA relies upon the inconsistencies in Officer Ternand's statements, contravening physical evidence, and eyewitness testimony to determine that Officer Ternand was unreasonable in his belief that Mr. [REDACTED] presented an imminent threat of death or bodily harm to the officer, thereby necessitating the use of deadly force.

**ALLEGATION 1:** Officer Brandon Ternand #2717 used an unreasonable and excessive amount of force when he shot Mr. [REDACTED] is **SUSTAINED**;

**ALLEGATION 2:** Officer Brandon Ternand #2717 used deadly force against Mr. [REDACTED] which was unprovoked and unwarranted is **SUSTAINED**.



Sharon R. Fairley  
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